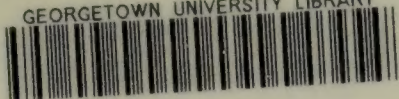


Foreign
Claims
Settlement Commission
of the
United States

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*Decisions
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FOREWORD

Although in recent decades American property has been nationalized by foreign countries with undesirable frequency, the average lawyer knows comparatively little about that phase of international law which deals with the adjudication of international claims. Indeed, apart from a small group of international lawyers, diplomats, and claimants, most attorneys and citizens are unfamiliar with the work of this country's national claims commission, the Foreign Claims Settlement Commission, a tribunal of the United States whose function is the adjudication of claims of American citizens against foreign countries for the nationalization or other taking of their property.

In part, the unawareness of the average lawyer of the functions and procedures for adjudication of claims is attributable to the fact that Commission decisions, although published as slip opinions, do not appear in any reporter system. For this reason, my predecessor as Chairman of the Commission directed that this volume be prepared and published, containing selected decisions together with topical annotations of all claims programs completed to date.

Although no material is included on programs presently being administered, such as claims against Yugoslavia for the nationalization of property of United States nationals since July 19, 1948, and the presettlement adjudication of claims against Cuba and China, the book affords an inclusive discussion of the many and varied factual and legal problems which have been resolved by the Commission in its past claims programs, and which comprise the background against which its present and future claims programs will be administered.

It is hoped that by acquainting the reader with the role and work of the Foreign Claims Settlement Commission, this book will contribute to a greater understanding of international claims adjudication.

LEONARD V. B. SUTTON
Chairman

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INTRODUCTION

HISTORY

The Foreign Claims Settlement Commission of the United States was created by the President's Reorganization Plan No. 1 of 1954 (68 Stat. 1279, 5 U.S.C. § 1332 (1964)), appearing on page 677, which became effective July 1, 1954. This plan abolished the War Claims Commission and the International Claims Commission and assigned their functions to the new agency.

The War Claims Commission had come into existence under the provisions of the War Claims Act of 1948 (62 Stat. 1240, 50 U.S.C. App. §§ 2001–2016 (1964)), appearing on page 681, and was to receive and adjudicate three categories of claims:

- (1) Claims of members of the Armed Forces of the United States imprisoned by the enemy during World War II and who, while so imprisoned, were not provided the quantity or quality of food required by the terms of the Geneva Convention of July 27, 1929. Compensation was fixed at the rate of \$1 per day.
- (2) Claims of civilian American citizens captured by the Imperial Japanese Government during World War II at Midway, Guam, Wake Island, the Philippine Islands, or any Territory or possession of the United States invaded by such government, or while in transit to or from any such place, or who went into hiding at any such place in order to avoid capture. Detention benefits were fixed at the rate of \$60 per month for those persons 18 years of age or over and \$25 per month for those persons under 18 years of age.
- (3) Claims of certain religious organizations in the Philippines affiliated with religious organizations in the United States, or by the personnel of such Philippine organizations, for relief furnished to American servicemen or civilian American citizens in the Philippines during World War II. Reimbursement was fixed at actual cost or fair value.

Provision was made for the payment of claims by the creation of the War Claims Fund consisting of the net proceeds of assets of Germany and Japan in the hands of the Office of Alien Property, Department of Justice, under the Trading With the Enemy Act of October 16, 1917, as amended (40 Stat. 411, 50 U.S.C. App. §§ 1–40 (1964)).

With the enactment of Public Law 303, 82d Congress, approved April 9, 1952 (66 Stat. 47), jurisdiction over two additional categories of claims was conferred upon the War Claims Commission:

- (1) Claims of members of the Armed Forces of the United States imprisoned by the enemy during World War II and who, while so imprisoned, were inhumanely treated or forced to perform uncompensated labor in violation of the terms of the Geneva Convention of July 27, 1929. Compensation was fixed at the rate of \$1.50 per day.
- (2) Claims of religious organizations eligible for reimbursement under the earlier program, for the post-war reconstruction cost of their schools, colleges, universities, scientific observatories, hospitals, dispensaries, orphanages, and other educational, medical, or welfare institutions in the Philippines destroyed or damaged as a consequence of World War II.

The International Claims Commission was established by the International Claims Settlement Act of 1949, approved March 10, 1950 (64 Stat. 12, 22 U.S.C. §§ 1621-1627 (1964)), appearing on page 705. This Commission was given jurisdiction to receive and adjudicate "claims of the Government of the United States and of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948, or included within the terms of any claims agreement hereafter concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof." When the Claims Convention between the Governments of the United States and Panama (appearing on page 737) entered into force on October 11, 1950, the International Claims Commission acquired jurisdiction over certain claims against the Government of Panama, as well as claims against the Government of Yugoslavia, under the International Claims Settlement Act of 1949.

The Foreign Claims Settlement Commission, assuming the functions of its predecessor Commissions, completed the work which they had begun under the 1948 and 1949 Acts, and in subsequent years completed other programs which the Congress entrusted to it by amendments to those Acts.

ARRANGEMENT OF MATERIAL

This publication highlights ten of the most important claims programs completed between 1950 and 1967. For the purpose of affording the reader an opportunity to observe how precedents were developed by the Commission in its administration of stat-

utes enacted by the Congress, the ten claims programs are presented in chronological order. However, they are divided into seven sections rather than ten because of the close relationship among some of the claims programs. The seven sections cover the following programs: claims against Yugoslavia and Panama; claims against Bulgaria, Hungary and Rumania; claims against Italy; claims against the Soviet Government; claims against Czechoslovakia; claims against Poland; and general war claims. In a final section, other programs administered by the Commission during this period are discussed briefly.

Each section contains selected decisions to illustrate the problems encountered by the Commission and how they were resolved. As an aid in these respects, each selected decision has headnotes reciting the principles or precedents involved and extensive annotations to indicate how they were applied in other cases. The annotations also cover other topics related to the major topics. Letters preceding the claim and decision numbers of the selected cases identify the claims program involved as follows: Y (Yugoslavia), PAN (Panama), BUL (Bulgaria), HUNG (Hungary), RUM (Rumania), IT (Italy), SOV (Soviet Government), CZ (Czechoslovakia), PO (Poland), and W (general war claims).

In an effort to afford a better understanding of the subject matter, related topics are cross-referenced within each section, and major topics are cross-referenced from one section to another. The full decision in any annotated case may be found in the Commission's library where there are bound volumes for each claims program maintained in numerical sequence according to decision number. The annotations also indicate the semiannual reports of the Commission in which the full decisions may be found. To the extent practicable, the decisions within each section are arranged in the following order according to subject matter: nationality, ownership, loss and valuation. The headnotes and annotations refer to the 1949 Act and the 1948 Act, as the case may be, which mean the International Claims Settlement Act of 1949, as amended, and the War Claims Act of 1948, as amended, respectively. The sections contain tables of statistics showing with respect to each claims program the number of claims filed, aggregate amount claimed, number of awards, aggregate amount of awards, amount of funds available for payment, and date when program was completed.

Included in this publication are a table of contents and list of exhibits; a table of claims covering published as well as annotated cases; and a comprehensive index. This publication may be cited as:

FCSC Dec. & Ann. (Page No.) (1968)

COMMISSION PRACTICES AND PROCEDURES

The decisions of the Commission in claims under each statute administered are final and conclusive on all questions of law and fact and not subject to review by any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise. This prohibition against review makes

it imperative that the Commission establish appropriate administrative and legal procedures to assure claimants of the opportunity fully to present their claims.

Under statutory authority, the Commission promulgates its own specific rules and regulations which are published in the Federal Register and available for public inspection. These regulations (appearing at page 765) generally apply to all programs with an occasional exception as may be dictated by special circumstances. At the beginning of each claims program when claim forms are mailed to potential claimants, the Commission also includes a copy of the specific statute, excerpts from its regulations relating thereto and detailed instructions for preparation and filing of the claims. Names and addresses of potential claimants are obtained from the records of the Commission and from the Department of State.

1. Receipt and Coding of Claims

Claims received by the Commission are acknowledged, recorded, and docketed after designating an appropriate number for each claim with identifying symbols. The claims are then assigned for initial examination and development to staff attorneys who have been fully trained to perform their functions. These training sessions stress, *inter alia*, the drafting of decisions and legal draftsmanship in general. Once assigned to a staff attorney, the claim remains in his charge until final disposition, in the absence of unusual circumstances requiring reassignment.

Recently the Commission inaugurated the procedure of coding claims during initial examination. This procedure requires the services of a data processing concern through which important statistics are gathered, such as the precise nature and type of each item of a claim, amount asserted therefor, and other information relating to the claimant. Not only does this procedure provide the Commission with essential information for the purpose of official reports to the Congress, but it also aids in the orderly disposition of a claims program by pointing out the legal and administrative problems that may reasonably arise and indicating the size of the staff that may be required.

2. Development of Claims

The instruction sheets accompanying the official claim forms suggest that supporting evidence be submitted with executed claims. However, the Commission recognizes that generally a claimant will be unable to fully document his claim at the time of filing because of the difficulties he faces in acquiring information from Communist countries. (Practically all of the claims programs authorized by statute involved Communist countries.) Accordingly, the Commission strongly suggests to potential claimants, attorneys, and other interested persons that claims be filed with or without documentary evidence in order to avoid a denial on the ground that the claim is untimely. In nearly all of the claims programs administered by the Commission the filing period was fixed by statute, leaving the Commission no discretion but to deny late-filed claims.

The development of a claim entails examination to determine its precise nature and ascertain what evidence is needed to render the claim valid under the governing statute. (Sometimes this examination discloses that the claim is clearly invalid, requiring denial without further development.) The Commission's Regulations provide that "The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his claim." (Section 531.6(d), appearing at page 773.) However, the Commission makes every effort, consistent with its official responsibilities, to assist claimants in documenting their claims. As necessary, development letters are sent suggesting what additional evidence should be submitted to render the claims valid, and where possible, outlining ways and means of securing such evidence. Since the controlling statutes invariably prescribe dates for the completion of claims programs, the Commission is compelled to fix time limits within which supporting evidence must be received in order to comply with such statutory termination dates. However, the Commission has rarely, if ever, invoked this technical rule against a claimant merely because the supporting evidence arrived late.

Pursuant to the governing Regulations (§ 500.1 (a) and (b), appearing on page 765), the only person who may represent a claimant before the Commission, other than the claimant (including a partner of a partnership or an officer of a corporation), is "an attorney at law admitted to practice in any State or Territory of the United States, or the District of Columbia." Consistent with customary legal practice, if a claimant is represented by counsel, all correspondence from the Commission is directed to such counsel unless the public interest dictates otherwise. Accordingly, all development letters are forwarded to counsel of record.

There are a number of ways in which the Commission assists claimants in supporting their claims, other than the suggestions made in development letters. The Commission frequently arranges for field interviews with claimants and/or their representatives in various cities throughout the United States. At such an interview the claim is carefully discussed by a staff attorney who outlines the evidence that may be lacking to render the claim valid and offers suggestions as to how to secure such evidence. Experience has shown that these interviews have been most helpful in clarifying existing problems for the claimants or their attorneys, and affording them an opportunity to have informal discussions of their claims at times and places mutually convenient to them and the Commission. Staff attorneys conducting these interviews are authorized to administer oaths so that they can take any affidavits of claimants and witnesses that circumstances warrant. Claimants are also advised that they may discuss their claims at the offices of the Commission during normal business hours.

Being an administrative body with authority to render final decisions that are not subject to judicial review, the Commission looks more to substance than to form in carrying out its statutory functions. Thus, the use of an improper form in asserting a claim does not cause summary rejection. The claim is received, acknowledged, recorded and docketed, and the claimant is given the proper forms and allowed to file them subsequently. For the same reasons appropriate evidence and information in any files or

records of the Commission are accepted in support of other related files. On a number of occasions the data processing devices employed by the Commission disclosed that certain claims involved common items of property, such as stock in the same foreign corporation. The record developed in some of these claims was sufficient to support the other related claims. Moreover, pertinent files of the Department of State transferred to the Commission frequently include much helpful information in these respects.

3. Field Offices

Additionally, the Commission has established field offices abroad for the purpose of investigating claims and obtaining on-the-spot appraisals of property as well as other pertinent information relating to ownership and loss of such property. Field offices have been maintained in West Germany, Yugoslavia, Poland and the Philippines, staffed by Americans with the assistance of local personnel. These field offices have been instrumental in establishing liaison with various foreign claims agencies in West Germany, Great Britain and Switzerland where information was obtained concerning property involved in claims before the Commission.

Apart from evidence relating to specific claims, the field offices acquired information of general interest which was invaluable in administering the claims programs. Such information included evidence concerning: forced transfers of property under discriminatory measures during World War II; restitution of such alienated property; prewar and postwar assessed valuations of property; purchasing power of local currencies; blocked bank accounts; building cost indices; local rent control laws; and payments made by foreign governments on account of the same losses asserted before the Commission. Much information was obtained from foreign officials and experts having personal knowledge of the facts. Of particular importance were valuation studies conducted by the Commission concerning the average values of certain real property (agrarian property, for example) and various items of common personal property (furniture, foods, crops, farm machinery, etc.). These values were applied in the absence of better evidence. Since the burden of establishing all elements of a claim rests upon the claimant, many otherwise meritorious claims would have been denied had these valuation studies not been made.

4. Decision and Hearing Procedures

When a claim is fully developed or it appears that no further evidence can or will be submitted, the entire record is reviewed and the claim is presented to the Commission for decision. The initial decision issued is known as a "Proposed Decision." The decision contains specific findings of fact and conclusions of law covering every element of the claim, thus fully satisfying the statutory requirement that decisions state the reasons for Commission action. Claims that involve unique questions of law or fact, all precedent decisions and substantial awards are assigned

to individual Commissioners in the first instance to assure that the decisions comply in every respect with Commission policy, statutory requirements, and applicable substantive law, including international law. Claimants are made fully aware of the bases for decisions, which has resulted in a reduction of the number of objections and requests for oral hearings.

A claimant may object to the findings and conclusions reached in the Proposed Decision and may request an oral hearing before the Commission. At an oral hearing claimant may appear personally and/or be represented by counsel, and he may submit new evidence in writing or orally, as well as argument in support of his objections. He may also testify on his own behalf and bring witnesses whose testimony will be recorded. All oral hearings are held at the offices of the Commission in Washington, D. C., and all expenses involved in appearing at oral hearings must be borne by the claimants.

Many claimants do not wish to make personal appearances at oral hearings, in which case the claimants may submit any supporting evidence and argument in writing. This procedure is known as a "hearing on the record." Whether there is an oral hearing or a "hearing on the record," the entire matter in every such case is carefully considered by the Commission *de novo*.

At the end of each Proposed Decision appears a notice to the claimant involved, advising him of the time within which to file objections and/or request an oral hearing, pursuant to Commission Regulations published in the Federal Register. (See § 531.5, appearing at page 772.) The notice recites that if no objections or request for oral hearing are filed, the Proposed Decision will be entered as the Commission's Final Decision on the claim. If objections are filed, the Commission may, after due consideration, enter a Final Decision affirming, modifying or reversing its Proposed Decision; issue an Amended Proposed Decision; or order further development of the claim. The Commission may also, on its own motion, order an oral hearing on a claim, even if no hearing is requested. Under certain circumstances, the Commission may schedule a presettlement conference or hearing before the Commission with respect to any issue involved in a claim. (See § 531.7 of the Commission's Regulations appearing at page 773.)

The Commission does not have a so-called "defender of the fund" to guard against the allowance of invalid claims. However, its procedures provide for a number of reviews at various levels during the processing of the claims. While an oral hearing is non-adversary, it is conducted in a manner calculated to expose every aspect of the claim under consideration, both favorable and unfavorable, which assures that invalid claims are not allowed.

Moreover, the Commission has a procedure in the nature of intervention which permits third parties to bring to the Commission's attention adverse information concerning any claim. This procedure may be invoked after a Proposed Decision is issued and notice thereof is posted on the Commission's bulletin board. Any interested person may obtain a copy of any decision at a nominal cost. Generally those who have intervened in other claims are claimants themselves and their interest lies in guarding against invalid claims the allowance of which would reduce the

funds available for payment of the valid claims. With few exceptions (Italian claims program, for example), the available funds have been insufficient to pay in full the principal amounts of all awards granted, thus requiring pro rata payments.

It should be noted that payment of awards granted by the Commission is a function within the exclusive jurisdiction of the Secretary of the Treasury. The Commission's statutory duties with respect to any claim end, in a routine case, when either a Final Decision has been entered denying the claim, or an award has been granted by Final Decision and it has been certified for payment to the Secretary of the Treasury.

5. Reopening Procedures

The Commission's Regulations (§ 531.5(1), appearing at page 772) provide for the reopening of a claim upon the timely filing of a petition supported by newly discovered evidence that warrants a change in the Final Decision previously entered. In practice, this regulation applies to a claim that has been denied in whole or in part and can be allowed on the basis of the newly discovered evidence, or a claim in which the new evidence justifies an increase in the earlier award. The Commission has never denied a petition to reopen because it was untimely unless consideration of the petition would prevent the Commission from completing the claims program within the statutory time limit.

Finally, the Commission's practices and procedures provide that if information comes to its attention through sources other than a claimant and it appears that a change in the Final Decision is justified, the Commission, on its own motion, will reopen the claim and take appropriate action.

SUITS INVOLVING THE COMMISSION

The Commission has been a party to a number of lawsuits in which its decisions were questioned. Both of the basic acts under which the Commission functions bar judicial review. Section 4(h), Title I of the International Claims Settlement Act of 1949, as amended, provides that "The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States, or by any court by mandamus or otherwise." (64 Stat. 16 (1950), 22 U.S.C. § 1623(h) (1964).) Section 11, Title I of the War Claims Act of 1948, as amended, contains similar provisions as follows: "The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General is authorized and directed to allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action." (62 Stat. 1246 (1948), 50 U.S.C. App. § 2010 (1964).)

The leading case involved the denial of a claim against Yugoslavia filed pursuant to Title I of the International Claims Settlement Act of 1949, as amended. Claimant sought to compel reconsideration of the Commission's decision on her claim, which presented the court with its first opportunity to construe Section 4(h) of the 1949 Act. In affirming judgment of the lower court dismissing the complaint, the United States Court of Appeals held as follows:

We may assume for purpose of argument that the provisions of Section 4(h) would probably not prevent judicial relief in the situation—to illustrate—where a claimant is denied consideration by reason of his race, creed or color. No violation of constitutional right is suggested here: plaintiff-appellant makes no contention, for example, that the United States has taken her property without paying for it. What happened was that Yugoslavia took plaintiff's property; the United States undertook to obtain moneys from Yugoslavia from which certain sorts of claims of United States nationals could be satisfied; a Commission was established to deal finally with such matters; plaintiff made a claim and was determined not to be in the class entitled to participate. Errors in the result reached, or errors in the admission of evidence or in the making of a legal ruling—assuming such errors to have been made—are not grounds for judicial intervention in the face of the congressional fiat that the Commission's determinations shall be free of judicial review. Plaintiff is barred by the statutory prohibition. (*de Vegvar v. Gilliland*, 228 F. 2d 640 (D.C. Cir. 1955); cert. denied, 350 U.S. 994 (1956).)

The *de Vegvar* holding, although broad in scope, did not prevent several other adversely affected claimants from seeking judicial review or reconsideration by the Commission. One case, held in abeyance by the United States Court of Appeals pending determination in the *de Vegvar* matter, followed the precedent thereby established. (*Dayton v. Gilliland*, 242 F. 2d 227 (D.C. Cir. 1957); cert. denied, 355 U.S. 813 (1957).) Another suit instituted shortly thereafter failed for the same reasons. (*Haas v. Humphrey*, 246 F. 2d 682 (D.C. Cir. 1957); cert. denied, 355 U.S. 854 (1957).) In the next case an attempt was made to avoid summary dismissal of the complaint under the authority of the *de Vegvar* decision. This time there was no request for judicial review, but merely a prayer that the claim be remanded for further hearing before the Commission. The appellate court found no basis for distinguishing this case from *de Vegvar* and affirmed judgment for the defendant. (*American & European Agencies, Inc. v. Gilliland*, 247 F. 2d 95 (D.C. Cir. 1957); cert. denied, 355 U.S. 884 (1957).)

In 1958 the United States Court of Appeals was presented with an unusual case involving the Immigration and Nationality Act of 1952. A claim against Yugoslavia was denied by the Commission

because claimant was not a national of the United States, his naturalization as a national of the United States having been cancelled by a United States District Court on the ground of fraud. After claimant died his executors sought a judgment declaring the deceased a national of the United States and therefore eligible for an award under Title I of the International Claims Settlement Act of 1949, as amended. Citing the *de Vegvar* decision as authority for affirming dismissal of the complaint, the United States Court of Appeals held that "the action of Congress in explicitly denying judicial relief in this specific situation must supersede the general provision of the Immigration and Nationality Act of 1952." (*Zutich v. Gilliland*, 254 F. 2d 464 (6th Cir. 1958).)

Several other claimants sued the Commission in the United States District Court for the District of Columbia, and their complaints were dismissed on the ground that the statute precluded judicial review. No appeal was taken in any of these cases. (*Sokitch v. Gilliland* (Civil Action File No. 1256-55); *Bloch v. Gilliland, et al.* (Civil Action File No. 1660-55); *Stein v. Gilliland, et al.* (Civil Action File No. 1661-55).)

Further attempts to compel reconsideration of claims by the Commission met with failure. (*First Nat'l City Bank v. Gilliland*, 257 F. 2d 223 (D.C. Cir. 1958); cert. denied, 358 U.S. 837 (1958), in which the lower court cited the *de Vegvar*, *Dayton*, *Haas*, and *American & European Agencies, Inc.*, decisions; *Tillman v. Anderson*, order of the United States District Court for the District of Columbia dismissing complaint is unreported; *per curiam* order of the United States Court of Appeals affirming dismissal is also unreported; cert. denied, 362 U.S. 957 (1960); rehearing denied, 362 U.S. 903 (1960); *Craig v. Foreign Claims Settlement Commission*, No. 15340, United States Court of Appeals for the District of Columbia (1959); petition to review the Commission's decision, allegedly contrary to Administrative Procedures Act of 1946, dismissed by *per curiam* order of the United States Court of Appeals, dated October 30, 1959.)

CLAIMS AGAINST YUGOSLAVIA AND PANAMA

YUGOSLAV CLAIMS PROGRAM STATISTICS

Statutory authority: Title I of the International Claims Settlement Act of 1949, approved March 10, 1950 (64 Stat. 12, 22 U.S.C. §§ 1621-1627 (1964)), and the Yugoslav Claims Agreement of July 19, 1948 (Agreement with the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and Its Nationals, July 19, 1948, 62 Stat. 2658 (1948), T.I.A.S. No. 1803)

Number of claims: 1,556
Amount asserted: \$149,344,249.70
Number of awards: 876
Amount of awards: \$18,817,904.89
Amount of fund: \$17,000,000
Program completed: December 31, 1954

PANAMANIAN CLAIMS PROGRAM STATISTICS

Statutory authority: Title I of the International Claims Settlement Act of 1949, approved March 10, 1950, *supra*, and the Panamanian Claims Convention of 1950 (Claims Convention with Panama, January 26, 1950, [1950] 1 U.S.T. 685, T.I.A.S. No. 2129 (entered into force October 11, 1950))

Number of claims: 67
Amount asserted: \$1,537,394.05
Number of awards: 62
Amount of awards: \$441,891.84
Amount of fund: \$400,000
Program completed: December 31, 1954

In the Matter of the Claim of

Docket No. Y-1757
Decision No. Y-857

JERKO BOGOVICH, ET AL.

Against the Government of Yugoslavia

Nationality requirements under Yugoslav Claims Agreement of 1948 and Section 4(a), Title I of the 1949 Act satisfied if claim was owned by a "national of the United States" on date it arose and continuously thereafter until July 19, 1948, effective date of Agreement. Claimants denied relief because they were not nationals of the United States on the date they succeeded to the claim of their American predecessor.

An estate of a deceased is not a national of the United States although the deceased was an American national. Nationality test applied to beneficiaries of estate who acquired interests on date of death of deceased. Claim is not endowed with nationality of deceased simply because the estate is not settled.

Taking of property by Yugoslavia outside statutory date, September 1, 1939 to July 19, 1948, did not give rise to claims under the Agreement.

PROPOSED DECISION

This claim is by 17 individuals who identify themselves as brothers, sisters, nephews and nieces and the testamentary heirs of Thomas Bogovic, a citizen of the United States from the date of his naturalization on January 17, 1913 to the date of his death in the United States on May 27, 1947. The claimants state they are Yugoslav citizens and all of them reside in Yugoslavia.

The claim is for the taking by the Government of Yugoslavia of property described by claimants as a three-quarter interest in the vessel "Barba Toma"; the vessel "SV. Apolinarij II"; house No. 117 at Malinska on the Island of Krk; a half interest in a house in Krk; arable ground and pasture called Petrovicia, entered in the Cadastral Commune Miholjice; a wood called "Lokvice" in Kijac, entered in the Cadastral Commune Miholjice; and fishing equipment.

Claimants have filed some evidence with respect to ownership of the property claimed, their succession to it and its taking by the Government of Yugoslavia. Such evidence is not conclusive but it appears therefrom that the Government of Yugoslavia took the property; part after July 19, 1948, the date of the Agreement between the Governments of the United States and Yugoslavia;

part between May 27, 1947, the date of death of Thomas Bogovic, and July 19, 1948, and part before May 27, 1947.

With a view to saving claimants the expense of obtaining and filing further evidence with respect to ownership and succession to the property and its taking by the Government of Yugoslavia, the Commission enters this Proposed Decision denying the claim on other grounds, namely, that the claimants are not eligible to receive an award under the Claims Agreement, regardless of the date of taking.

Article I (a) of the Agreement provides for the "settlement and discharge of all claims . . . on account of the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect thereto, which occurred *between September 1, 1939 and the date hereof,*" *namely, July 19, 1948.* Thus, it is clear that the Agreement does not cover, and claimants could not be compensated for property taken after July 19, 1948.

Articles 1(a) and 2 of the Agreement provide compensation to American *nationals* who were such at the time *their* property was taken. If the property for which compensation is sought was taken after the death of Thomas Bogovic, the Government of Yugoslavia did not take his property, but only such rights or interests therein which passed to his devisees and legatees who are not American nationals. Thus, it is clear that they could not be compensated for any property which was taken between May 27, 1947 and July 19, 1948.

The Agreement is not definite as to whether Yugoslav citizens who acquire a right or interest in property which was owned by an American national at the time it was taken shall be compensated. In order to resolve this question it is, therefore, necessary to look to the negotiations leading up to the Agreement, the International Claims Settlement Act of 1949, and any other available data. The Commission obtains no assistance from the history of the negotiations. The International Claims Settlement Act of 1949 provides in Section 4 (a) that in deciding claims, the Commission shall apply "(1) the provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity." Thus, the Commission feels impelled to follow "the applicable principles of international law" in deciding this question.

It is a well-settled principle of international law that to justify diplomatic espousal, a claim must be national in origin; that it must, in its inception, belong to those to whom the state owes protection and from whom it is owed allegiance (Borchard, *The Diplomatic Protection of Citizens Abroad* 666 (1928)). Further, although the national character will attach to a claim belonging to

a citizen of a state at its inception, the claim ordinarily must continue to be national at the time of its presentation, by the weight of authority (Borchard, *supra*, at 666), and there is general agreement that it have a continuity of nationality until it is filed (Feller, *The Mexican Claims Commission* 96 (1935)). That it must continue its national character until its settlement or decision will also be shown by cases cited subsequently.

As a rule, the Government of the United States refuses to espouse claims which have not continued to be impressed with American nationality from the date the claim arose to the date of its settlement (V Hackworth, *Digest of International Law* 804 (1943)). Thus, in its form, "Application for the support of Claims against Foreign Governments," issued by the Department of State on May 19, 1919, and revised on October 1, 1924, the following language appears in Paragraph 6:

Moreover, the Government of the United States, as a rule, declines to support claims that have not belonged to claimants of one of these classes [those who have American nationality or who are otherwise entitled to American protection] from the date the claim arose to the date of its settlement. Quoted in Eagleton, *The Responsibility of States in International Law* 269.

The practice of the State Department in conformity to this principle is illustrated in a letter of August 11, 1926, addressed to an attorney of a company in connection with a claim allegedly incurred by a requisition by Italian authorities. The letter stated:

. . . it is assumed that this Insurance Company was a foreign corporation, in which case there would be a break in the continuity of American ownership of this claim. . . . The Government of the United States, as a rule, declines to present claims through diplomatic channels that have not belonged to American claimants from the date the claim arose to the date of its settlement. Quoted in Hackworth, *supra*, p. 805.

Similarly, where an American claimant died subsequent to the submission of his claim to the Japanese Government, leaving his Japanese wife as his sole heir and as executrix under his will, the Department of State refused to espouse the claim longer since "ownership of the claim" had "passed to . . . [the] Japanese wife." (M.S. Department of State, file 494.11 Barstow, Ebenezer, cited in Hackworth, *idem*.)

The rule of continuity of nationality in a claim has also been followed by international tribunals. The United States-Mexican and Spanish-Mexican Commissions followed this traditional rule without deviation, and the "rule is implicit in the provision in all the Rules of Procedure requiring the nationality of the owner or owners of the claim from the time of origin to the date of filing

to be set forth in the memorial (Feller, *supra*, at 96). And the British-Mexican Commission stated that "a claim must be founded upon an injury or wrong to a citizen of the claimant Government, and that title to that claim must have remained continuously in the hands of citizens of such Government until the time of its presentation for filing before the Commission." (Case of F. W. Flack, Decisions and Opinions of Commissioners, p. 80 at 81, cited in Feller, *idem*.) Following this principle in the Case of Edgardo Trucco (Decision No. 1, unpublished), the latter Commission dismissed a claim for damage to property which had belonged to a British subject at the time of the injury but which had been left by will to a Mexican national prior to the filing of the claim. (Cited in Feller, *idem*.) Further, both the British-Mexican Commission in the Case of Minnie Stevens Eschauzier (Further Decisions and Opinions, p. 180) and the French-Mexican Commission in the Case of Maria Guadalupe A, Vve. Markassuza (Sentence No. 38, unpublished) required continuous nationality not only until the date of filing but subsequently to the date of the award. (Cited in Feller, *supra*, at 97.) In the former case it was stated at p. 182:

A state may not claim a pecuniary indemnity in respect of damages suffered by a private person on the territory of a foreign state unless the injured person was its national at the moment when the damage was caused and retains its nationality until the claim is decided.

Persons to whom the complainant state is entitled to afford diplomatic protection are for the present purpose assimilated to nations.

In the event of the death of the injured person, a claim for a pecuniary indemnity already made by the state whose national he was can only be maintained for the benefit of those heirs who are nationals of that state and to the extent to which they are interested. (Quoted in Ralston, *supra*, at 77.)

And in the Geadell case (Decisions and Opinions, 55) a claim of British origin which did not preserve that character until its presentation before the same Commission, as the residuary legatee of the claim was an American woman, was rejected even though the executor of the testator's estate was a British subject. (Cited in Ralston, *idem*, and in Hackworth, *supra*, at 805.)

The instant claim lost its American nationality upon the death of Thomas Bogovic on May 27, 1917, and thereafter was impressed with Yugoslav nationality. It is clear, then, that under the policy of the United States this claim would no longer be espoused by it against Yugoslavia. Further, there is ample authority under the decisions of international tribunals that a claim must have a continuous national character from the date of its origin to the date of settlement.

We are satisfied that the negotiators of the Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia, were aware of the policy of the United States Government and established principles of international law and had they desired to depart from them would have inserted appropriate provisions in the Agreement. Since they did not, we conclude that a claim to be within the jurisdiction of this Commission must be owned by American nationals from the date the claim arose to the date the Agreement was signed.

For the foregoing reasons this claim is denied in its entirety.

Dated at Washington, D.C.

May 27, 1954.

FINAL DECISION

A Proposed Decision denied this claim for the reason that the claim was not owned by American nationals from the date the claim arose to the date the Agreement was signed. Subsequent to the issuance of the Proposed Decision the claimants filed objections which we shall now consider.

Claimants apparently deny that the claim ever ceased to be owned by an American national. The basis of this contention is that the real claimant is Thomas Bogovich, deceased, and that claimants, although not United States nationals, filed the claim "on behalf of the unresolved estate of the late Thomas Bogovich".

Claimants, however, have no standing to claim as fiduciaries of the decedent's estate, having filed no letters testamentary or of administration or any other evidence whatsoever authorizing them to claim as the decedent's personal representatives. Furthermore, there is no merit in claimants' contention that national continuity of a claim of a decedent is preserved or that a claim is endowed with United States nationality after his death simply because his estate is not settled. The estate of a deceased United States national is obviously not itself a national of the United States and it is the nationality of the beneficiaries of his estate after his death which is the moving consideration in determining nationality of the claim. (Ralston, Supplement to the Law and Procedure of International Tribunals § 293a (1936))

Claimants also assert that the only criterion upon which eligibility for compensation rests is that the claim be owned at the time by a United States national, since no other qualification is set forth in the Yugoslav Claims Agreement of 1948. Claimants contend the practice and policy of the United States Government in espousing claims should not be a consideration in interpreting the Agreement in this respect, since the United States omitted to

include a provision providing for national continuity and the principle *contra proferentem* should be applied.

But the principle *contra proferentem* has no application here, whatsoever, for the construction we adopt in no way advances the interests of the United States in this matter, nor would the opposing view be disadvantageous to it. Once an international claim arises, the United States Government has complete discretion as to whether it will espouse such a claim. If it chooses not to do so, the choice involves no advantage nor disadvantage to it, and its election in this respect has not been circumscribed by any provision of the Agreement.

We hold that claimants' objections have no validity and that the Proposed Decision denying the claim is correct.

Therefore, thirty days having elapsed since the claimants herein and the Government of Yugoslavia were notified of the Proposed Decision of the Commission on the above claim, the objections filed by claimants having been duly considered, and the Government of Yugoslavia not having filed a brief *amicus curiae* pursuant to the opportunity duly afforded therefor in accordance with its request, such Proposed Decision is hereby adopted as the Commission's Final Decision on this claim.

Dated at Washington, D.C.

December 8, 1954.

National character of claim.—It is an accepted rule of international law that a nation will espouse claims only of persons who were nationals of the claimant state at the time the claim arose. This rule is a formulation of the principle that an injury to a national is an injury to his state which warrants the advocacy of the state in an effort to obtain redress for the wronged party. The rule has been invoked in varying terms in the statutes and agreements giving rise to the claims programs administered by the Commission. Section 4(a) of Title I of the International Claims Settlement Act of 1949 (appearing at page 706) provided for the determination of claims of the "Government of the United States and of nationals of the United States." The term "nationals of the United States" is described in Section 2(c) as including "persons who are citizens of the United States" and those "who, though not citizens of the United States, owe permanent allegiance to the United States."

Similarly, Article 1 of the 1948 Agreement with Yugoslavia (appearing at page 731) discharged "claims of nationals of the United States," referred to in Article 2 as certain specified "claims of nationals of the United States." Article 3 of the 1948 Agreement states that these claims "do not include claims of individual na-

tionals of the United States who did not possess such nationality at the time of nationalization or other taking." An express provision of Article 3 was that claims excluded therein were to be covered by direct negotiations between the two Governments or by compensation procedures to be established by Yugoslavia. The Commission is informed that in a number of cases Yugoslavia did allow compensation to such "late nationals," a term that became part of the nomenclature employed by the Commission.

In examining one claim the Commission adverted to the reasoning underlying the limitation of the Agreement to claims based on property which was owned by those who were nationals at the time of nationalization or other taking. It pointed out that under "international law and practice . . . an injury to an individual is an injury to a state of which he is a national," and that "the nationalization or other taking of the property of a person who is not a citizen of the United States at the time of such taking could not constitute an injury to the United States warranting it to intervene on his behalf." (*Claim of Dolores Moja Moore*, Docket No. Y-910, Dec. No. Y-2.) Thus, claims that were not owned by United States nationals on the dates they arose were denied. (*Claim of John Sturm, et al.*, Docket No. Y-1434, Dec. No. Y-682.)

In another claim, claimant sought recovery for several parcels of real estate, certain of which were encumbered with a life estate in favor of her mother who assigned these interests to her in 1952. The claim for the life estate was denied because the life tenant was not a "national of the United States" on the date of taking by Yugoslavia. (*Claim of Elizabeth Muller*, Docket No. Y-1480, Dec. No. Y-919.) Similarly, a claim for an interest inherited from a Yugoslav citizen in December 1948 was denied. (*Claim of Atina Toshoff*, Docket No. Y-478, Dec. No. Y-482.)

Once it was established that a claim was impressed with United States nationality at its inception, the Commission focused on the question whether the claim retained that character for the appropriate time thereafter. The precedents vary as to the point in time to which it must be established that a claim was continuously owned by a national of the espousing state.

In the *Bogovich* claim, the Commission held that the nationality requirements are satisfied if a claim against Yugoslavia was owned by a national of the United States on the date it arose and continuously thereafter until July 19, 1948, the effective date of the Yugoslav Claims Agreement of 1948.

A subsequent claim under the Agreement presented the situation wherein the claim was owned continuously by United States nationals from the date of taking to the date of the Agreement, but not thereafter. The Commission acknowledged the existence of precedents under international law requiring that a claim be national in character from the date it arose to the date of settlement. However, based on the provision of Section 4(a) of the International Claims Settlement Act which required that it apply the provisions of the Yugoslav Agreement before referring to the applicable principles of international law, the Commission concluded that the primary purpose of the Agreement and the statute—the prompt distribution of the Yugoslav Claims Fund—would

be defeated if the Commission were forced to reinvestigate each claim to determine its national character subsequent to the effective date of the Agreement. Accordingly, the Commission adhered to the rule enunciated in the *Bogovich* claim, although a claim may have been owned by a nonnational of the United States after July 19, 1948. (*Claim of Estate of George Straub, Deceased, et al.*, Docket No. Y-990, Dec. No. Y-1405.)

With respect to stockholder interests in nationalized Yugoslav corporations, the Commission concluded that a stockholder's claim arose on the date of nationalization of the corporation. Thus a claimant who had acquired United States nationality on June 23, 1947, was denied recovery because the evidence disclosed that the corporation on which his claim was based was nationalized on December 5, 1946. (*Claim of Frederick Bullaty*, Docket No. Y-933, Dec. No. Y-288.)

Dual nationals.—On occasion the Commission was presented with the situation wherein the record disclosed that a claimant who qualified as a United States national at pertinent times had retained the nationality of the country of his origin. The fact that claimant possessed the nationality of the foreign state was deemed not relevant to the question of whether he satisfied the nationality prerequisites under United States law. Possession of the nationality of the foreign state was important with respect to other elements of the claim, however, as is illustrated in a claim in which the record indicated that the Government of Yugoslavia adopted the position that claimant's property was exempt from nationalization because he had retained Yugoslav nationality. Recovery was denied because claimant failed to establish a taking by the Government of Yugoslavia. (*Claim of Stephen Parlic*, Docket No. Y-1079, Dec. No. Y-1080.) In a similar claim which reached the same result the Commission indicated that acquisition of United States nationality did not *ipso facto* deprive claimant of his Yugoslav nationality because under Yugoslav law it was necessary to obtain a formal release of citizenship from the appropriate authorities. (*Claim of Mile Raseta*, Docket No. Y-1112, Dec. No. Y-853, Final Decision.) A discussion of the taking of property of "dual nationals" appears in the annotations to *Claim of John Grisan*, at page 108.

Nationality of corporations.—In order to establish the eligibility of a corporate claimant under the 1948 Agreement it was necessary to prove that the corporation was organized under the laws of the United States, or any state or other political entity thereof, and that twenty percent of the outstanding securities of the corporation were owned by individual nationals of the United States, directly or indirectly. (See Articles 1 and 2 of the Agreement, appearing at page 731.) The Commission ruled that this provision of the Agreement meant beneficial ownership by United States nationals and therefore denied recovery to a domestic corporation with more than eighty percent of its stock registered in the names of American citizens but beneficially owned by aliens. (*Claim of Westhold Corporation*, Docket No. Y-1235, Dec. No. Y-54.) For a complete discussion of the issue of beneficial ownership, see the *Claim of Siegfried Arndt*, appearing at page 39.

In another claim the phrase "any class of the outstanding securities," found at Article 2 of the 1948 Agreement, was held to mean shares of stock issued by the corporation, and not assets of the corporation in the form of stock of other entities. (*Claim of Cisatlantic Corporation, et al.*, Docket No. Y-1113, Dec. No. Y-951.)

In a claim arising out of an interest in a corporation that was confiscated by criminal sentence of a county court in Yugoslavia on November 21, 1945, which decision was affirmed by the Supreme Court of Croatia on January 19, 1946, claimant, who acquired United States nationality on August 9, 1946, contended that the 1945 confiscation was not effective until the execution of the sentence of confiscation, and that the property was taken on December 5, 1946 by a nationalization law of that date. The Commission determined that, under Yugoslav law, the effective date of taking was the date on which the Supreme Court of Croatia affirmed the decision of the lower court and that the December 5, 1946 Act had no effect on the corporation because it had already passed into ownership of the State on January 19, 1946. Recovery was denied because claimant was not a "national of the United States" on the date of taking. (*Claim of Edith Neuman de Vegvar*, Docket No. Y-1275, Dec. No. Y-1460.) A more extensive discussion of the issue of date of taking can be found in the *Claim of John Grisan*, appearing at page 107.

In another claim the parties appearing before the Commission as claimants included four persons who owned a Swiss corporation which in turn held a large number of shares of a seized Yugoslav corporation, and an individual to whom these four persons had transferred title to the shares of the Swiss corporation in 1941 with the understanding that these shares would be returned on demand. Three of the four beneficial owners of the shares and the ostensible owner thereof qualified as United States nationals on the date the Yugoslav corporation was taken in 1945.

In order to save the claim of the fourth beneficial owner, the theory was propounded that the ostensible owner of the Swiss corporation was the sole owner under Swiss law and that, as an American national, he was an eligible claimant for the interest in the seized corporation. An alternate theory advanced was that under American law the ostensible owner was a constructive trustee, a "juridical person" with 20% or more of the interest therein vested in United States nationals, and, therefore, an eligible claimant under the Agreement.

The Commission held that the ostensible owner of the shares was not a "juridical trustee" under Article 2 of the Agreement because the agreement between him and the four beneficial owners did not create a "juridical person" as contemplated by the 1948 Agreement, and, additionally, that he was not a "juridical person" under the laws of Switzerland.

Based on a determination that the relationship created was merely that of principal and agent, the Commission ruled that the ostensible owner or asserted "juridical person," and the beneficial owner who was not a United States national on the date the claim was filed, had not satisfied the nationality requirements

and their claims were denied. Awards were granted to the other three claimants based on their beneficial ownership interests in the seized Yugoslav corporation. (*Claim of Edwin A. Binder, et al.*, Docket No. Y-1036, Dec. No. Y-1535.)

In another claim, the Commission held that a domestic corporation did not qualify as a national of the United States under the Agreement at the time of taking of certain of its property by the Yugoslav Government, because its two stockholders did not acquire United States nationality until after that time. (*Claim of National Investors Fund, Inc.*, Docket No. Y-721, Dec. No. Y-498.)

With respect to the nationality of corporations, the Commission held that secondary evidence, such as unsupported statements, was insufficient to establish that claimant corporation is a "national of the United States." (*Claim of New Jersey Industries, Inc.*, Docket No. Y-1317, Dec. No. Y-1434.)

The Commission granted an award to the United States of America for the loss of a jeep and two aircraft in a decision wherein it stated that "the right of the United States Government . . . to receive compensation . . . is expressly recognized in section (a) of article 1 of the agreement of July 19, 1948 between the Governments of the United States and Yugoslavia." (*Claim of United States of America*, Docket No. Y-1057, Dec. No. Y-1214.)

Assignments of interests.—Several claims before the Commission under the Yugoslav Claims Agreement of 1948 involved assignments of interest which raised questions with respect to nationality requirements. In one claim, a United States national was asserting a one-half interest in real property in his own right and the balance by virtue of an assignment from his brother, a nonnational, made in 1947 after the taking of the property by the Government of Yugoslavia. The Commission denied recovery for the latter interest, stating that "claimant could not derive any greater rights than his assignor had under the . . . Agreement of July 19, 1948." Therefore, "since, at the time of taking, the assignor was not a national of the United States, that part of the claim based upon the assignment was not settled by the Agreement . . . and is not . . . within the jurisdiction of the Commission." (*Claim of Dusan Popov*, Docket No. Y-261, Dec. No. Y-1261.)

The Commission was presented with substantially the same question in a claim filed by an individual who was naturalized in 1950, based upon property assertedly nationalized between 1945 and 1947, which property had been assigned to claimant by a stateless person on June 8, 1951. Citing its holding in the *Claim of Dolores Moja Moore*, Docket No. Y-910, Dec. No. Y-2, the Commission denied recovery to the assignee. (*Claim of Danielle O'Neill*, Docket No. Y-847, Dec. No. Y-17.)

Nationality of beneficiaries.—Claimant asserted an interest acquired under the will of her husband, a United States national at the time of taking, who died three months prior to the effective date of the Yugoslav Agreement. The Commission determined that claims under the Agreement must be impressed with American nationality from the date of loss to the date of the Agree-

ment. Accordingly, recovery was denied because claimant did not acquire United States nationality until after the date of the Agreement. (*Claim of the Estate of Joseph Kren, Deceased*, Docket No. Y-660, Dec. No. Y-1171.)

In another claim the Commission granted an award although the claim passed by inheritance to nonnationals of the United States on a date subsequent to July 19, 1948, the date of the 1948 Agreement. (*Claim of the Estate of George Straub, Deceased, et al.*, Docket No. Y-990, Dec. No. Y-1405.)

National character of claims under the Panamanian Claims Convention.—The Panamanian Claims Convention (appearing at page 737) was similar to the Yugoslav Agreement in that it settled claims of persons who were “nationals of the United States.” Accordingly, the Commission was constrained to deny a claim under the Panamanian Convention because claimant failed to establish that he was a United States national on the date of loss. (*Claim of Axel Sealund*, Docket No. PAN-66, Dec. No. PAN-32.)

Similarly, in a claim wherein it was stated that the owner of the property on the date of taking had been born in London, England, the Commission, lacking any other proof of citizenship, found that claimant had no standing before the Commission and denied the claim. (*Claim of Lydia Pagen*, Docket No. PAN-62, Dec. No. PAN-29.)

Article I of the Panamanian Convention refers to “claims of the United States of America” and Article V refers to the “loss suffered by several nationals of the United States.” A claim was filed in the alternative by a corporation organized under the laws of Panama and by a United States national who owned 99.9% of the corporate stock. The Commission denied recovery to the corporation because its claim was not a claim of the United States or that of a national of the United States. The claim of the American stockholder was recognized to the extent of his interest in the foreign entity because his ownership created a substantial American interest in the corporation, thereby making it a “claim of the United States” embraced within Article I of the Convention. (*Claim of Panama Sugar, Fruit & Cattle Co., et al.*, Docket No. PAN-13, Dec. No. PAN-65.)

Acquisition of United States nationality.—Although the background of the nationality issue is international in character, the Commission was involved with the implementation of United States nationality laws because the question of nationality status is one of municipal law as distinguished from international law. (III Hackworth, *Digest of International Law* 1 (1942).) Accordingly, a basic concern of the Commission was whether the claimant satisfied the prerequisites of the appropriate statute and thereby established the essential link with the United States which justified its intervention on his behalf.

Generally speaking, United States nationality derives from birth either in the United States or abroad (if the parents satisfy certain conditions) or is acquired by naturalization proceedings. Additionally, it was possible at one time for an alien woman to acquire United States nationality by marrying a citizen of the United States. However, the “Cable Act” of September

22, 1922 (42 Stat. 1021) expressly precluded acquisition of nationality by this method.

In determining whether the requirements of nationality by birth have been established, the Commission relied on evidence such as birth certificates, contemporary church records, and United States passports. In situations involving acquisition of nationality by naturalization the Commission based its ruling upon information supplied by the Immigration and Naturalization Service of the United States Department of Justice.

Expatriation.—The practice of expatriating naturalized citizens who choose to return to their country of origin to reside has “a long established and widely accepted history.” (*Schneider v. Rusk*, 377 U.S. 163 at 167 (1964) (dissent of Mr. Justice Clark).) The determination of claims under the 1948 Agreement involved some interesting applications of the appropriate expatriation laws.

Section 2 of the Act of March 2, 1907 (34 Stat. 1228), established a rebuttable presumption that a naturalized American citizen who returned to his native country and resided there for two years thereby forfeited his American citizenship. A claim was submitted under the Yugoslav Agreement of 1948 based in part upon property owned by a naturalized citizen who moved to his native Yugoslavia in 1926 and resided there until his death in 1946. The Commission’s Proposed Decision denied the portion of the claim based on his ownership interest in the property which was taken in 1945 by the Yugoslav Government, for the reason that he had expatriated himself pursuant to the provisions of the aforementioned Act, and the property therefore was not owned by a national of the United States on the date of taking as required by the 1948 Agreement. At a hearing held thereafter, claimants submitted evidence that their predecessor in interest had departed the United States for reasons of health, that his illness had endured to the date of his death in 1946, and that he periodically indicated his intention of remaining a United States citizen by paying a local nonresidence tax and renewing his visa.

Based upon this evidence, the Commission found that the presumption of expatriation for his residence abroad under the Act of March 2, 1907 had been overcome and that he had remained a United States citizen until his death. Accordingly, an award issued for the property owned by him. (*Claim of Sofia Kilz, et al.*, Docket No. Y-464, Dec. No. Y-1353, Final Decision.)

Substantially the same provisions for loss of nationality because of continuous residence abroad which appear in the Act of March 2, 1907 were incorporated into the Nationality Act of 1940 (54 Stat. 1137). Section 404 established certain conditions whereby a naturalized citizen lost his nationality; the presumption of expatriation found in the earlier legislation was eliminated in these enumerated situations. Section 409 of the Nationality Act of 1940 provided that those persons who were subject to the rebuttable presumption of the Act of March 2, 1907 were to continue to be subject to the presumption for a period of six years from the effective date of the 1940 Act.

A former Yugoslav national who had acquired United States citizenship in 1930 submitted a claim under the 1948 Agreement,

and the record disclosed that she had returned to Yugoslavia in 1931 and had resided there until 1946 when she moved to Austria where she lived until December 1949. The Commission held that under the provisions of the Act of March 2, 1907 and the Nationality Act of 1940, claimant had a six-year period ending on October 15, 1946 in which to rebut the presumption of expatriation arising from her residence in Yugoslavia. Having failed to do so, the Commission ruled that claimant lost her nationality on that date and recovery under the Agreement was denied because the subject property was not owned by a national of the United States on the date of nationalization. (*Claim of Albine Zibert Schroif*, Docket No. Y-764, Dec. No. Y-1342.)

The laws governing naturalization and expatriation underwent substantial revision when Congress enacted the Immigration and Nationality Act of 1952 (66 Stat. 163, 8 U.S.C. § 1101 (1952)), but the provisions with respect to loss of nationality for continuous residence abroad were substantially similar to those appearing in the prior statutes. However, in 1964 the Supreme Court of the United States held that Section 352(a) (1) of the Immigration and Nationality Act of 1952 providing that a naturalized citizen shall lose his nationality by having continuous residence for three years in the territory of the foreign state of which he was formerly a national was unconstitutional as it was violative of the due process clause of the Fifth Amendment (*Schneider v. Rusk*, 377 U.S. 163 (1964)). Noting that native-born citizens are free to reside abroad indefinitely without suffering loss of citizenship, the court struck down this discrimination against naturalized citizens and the resultant creation of "second-class citizenship."

The Nationality Act of 1940 furnished the basis of the Commission's ruling in another claim under the 1948 Agreement. Claimant was born in the United States in 1907 but went abroad in or about 1910. In 1925 she took up permanent residence at her father's birthplace which was then a part of Yugoslavia, having been annexed from the former Austro-Hungarian Monarchy in 1918 pursuant to the Treaty of Saint Germain. Under Yugoslav law claimant, as a minor, acquired Yugoslav nationality. Relying on Section 401(a) of the Nationality Act of 1940 which provided that a person who had acquired foreign nationality through the naturalization of a parent, and who was at the same time a citizen of the United States, must within two years of the effective date of the Act, return to take up permanent residence in the United States or be deemed to have elected to discontinue his United States citizenship, the Commission determined that claimant had lost her nationality on January 13, 1943, and denied the claim because the property was not owned by a national of the United States on the date of nationalization in 1945. (*Claim of Valarie Klobschauer*, Docket No. Y-1504, Dec. No. Y-1119.)

The effect of voting in a Yugoslav election upon the nationality of a naturalized American citizen was the issue in another claim under the Yugoslav Agreement of 1948. Claimant, a naturalized citizen since 1924, voted in a Yugoslav political election in 1945 and was expatriated under the Nationality Act of 1940. He then

subscribed to an oath of allegiance on September 24, 1946, thereby reacquiring his United States citizenship. A portion of the claim was denied because the record disclosed that certain property was taken on January 18, 1946, during the period in which claimant did not possess nationality of the United States. However, after presentation of evidence at a hearing, the Commission determined that claimant had voted in the Yugoslav election under duress and, therefore, had not forfeited his United States citizenship. Accordingly, an award issued for that property which was nationalized on January 18, 1946. (*Claim of Svetko Yankovich*, Docket No. Y-460, Dec. No. Y-1341, Final Decision.)

Section 401(e) of the Nationality Act of 1940, the basis of the Commission's initial decision in the aforementioned claim, was held to be constitutional in *Perez v. Brownell*, 356 U.S. 44 (1958). However, in a later case the Supreme Court expressly overruled its prior decision, holding that an American citizen cannot be deprived of his citizenship by voting in an election in a foreign country. (*Afroyim v. Rusk*, 387 U.S. 253 (1967).)

The ruling that claimant had expatriated himself under the provisions of the Act of March 2, 1907 constituted the basis for a denial of a claim under the Yugoslav Agreement of 1948, where claimant, a native-born citizen of the United States, had served in the Austro-Hungarian Army from October 1913 to January 1914 and from July 1914 to November 1, 1918, at which time he took an oath of allegiance to that country. The Commission held that claimant had lost his United States nationality under Section 2 of the Act of March 2, 1907 by taking an oath of allegiance to Austro-Hungary and serving in its army, and recovery was denied, *inter alia*, because the Yugoslav Agreement did not settle claims based on property which was owned at the time of taking by persons who were not nationals of the United States. (*Claim of John Grill, et al.*, Docket No. Y-1131, Dec. No. Y-1219.)

In a similar situation it was contended by the Government of Yugoslavia that the claim should be denied because claimant, a naturalized citizen of the United States, "declared" for German citizenship at the beginning of the German occupation of Yugoslavia and thereby lost her United States nationality pursuant to the provisions of Section 401(b) of the Nationality Act of 1940. The Commission ruled that claimant did not lose her United States nationality despite the fact that her name appeared in a "book of declarants" for German citizenship because the record failed to disclose that the persons whose names were reflected therein took an oath or formal declaration of allegiance to a foreign state which would operate to expatriate claimant. (*Claim of Maria Hudolin*, Docket No. Y-1376, Dec. No. Y-1179.)

In a claim under the 1948 Agreement which was submitted by a naturalized citizen whose certificate of naturalization was cancelled in 1933 and whose reapplication for citizenship filed in 1950 was still pending at the time of the decision, the Commission held that the cancellation of naturalization rendered the naturalization void *ab initio* and, accordingly, recovery was denied because claimant was not a "national of the United States" at any time during the statutory period, September 1, 1939 to

July 19, 1948. (*Claim of Peter Damjan Janus*, Docket No. Y-1721, Dec. No. Y-377.)

For a discussion of the aspect of this claim regarding denial of claims for property taken by Yugoslavia after July 19, 1948, see annotations to *Claim of John Grisan*, appearing at page 110.

In the Matter of the Claim of

Docket No. Y-595
Decision No. Y-1536

SIEGFRIED ARNDT

Against the Government of Yugoslavia

Beneficial interest rather than nominal or legal title controlling in determining ownership of property under Yugoslav Claims Agreement of 1948 and Section 4(a), Title I of the 1949 Act. Ownership of stock interest in foreign corporation on date of nationalization constituted two items of property, namely, interest in net worth of corporation, and interest in claim for nationalization. Sale of shares in nationalized corporation may effect transfer of either or both interests depending upon intention of parties to the transaction. Claimant, having established that he retained claim for nationalization upon sale of stock, recognized as proper party claimant.

FINAL DECISION

On November 26, 1954, the Commission issued its Proposed Decision herein which, for the reasons therein stated, denied this claim in its entirety. Thereafter, pursuant to applicable Commission procedures, objections to such decision were duly filed and a hearing held thereon. The claimant did not appear at the hearing but was represented by counsel who, at that time, presented additional evidence, filed a brief and made oral argument in support of such objections. Pursuant to leave granted at the hearing, additional evidence was also introduced thereafter.

Upon the entire record now before it, the Commission has concluded that its Proposed Decision should not be followed and that an award should be made to the extent hereinafter indicated.

It is established that the claimant has been a citizen of the United States since his naturalization on September 5, 1944. His claim allegedly derives from the taking by the Government of Yugoslavia of: (1) the assets of Odol Kompanija D.D., a Belgrade corporation, (hereinafter referred to as "Odol"); (2) the assets of Hrvatsko Odol Drustov, D.D. (Croatian Odol Corporation), a Zagreb corporation, (hereinafter referred to as "Croa-

tian"); and (3) a parcel of real estate located in Crna Bara, Yugoslavia which, while admittedly entered in the title records in the name of one Paul Zonda, was assertedly held by him as trustee for Odol.

As set forth in the Proposed Decision, all of these properties were admittedly taken subsequent to the claimant's naturalization, the Odol property on February 12, 1945, Croatian by a series of proceedings which were completed on February 12, 1946, and the Crna Bara property on February 6, 1945.

The claimant's interest in these properties, as of the date of their taking, is allegedly an indirect interest, derived through his asserted 100% ownership at that time of a German corporation, Kohlensaure Industrie A.G., of Dusseldorff, Germany (formerly named Bank Fuer Industrie und Verwaltung A.G.), which is hereinafter referred to as "Kohlensaure", and which, it is also asserted, then owned 87.3% of the then outstanding shares of another German corporation, Lingnerwerke A.G. (hereinafter referred to as "Lingner") which, in turn, is said to have owned, at the time of their taking, the two Yugoslav enterprises above mentioned, as well as, through the alleged trusteeship of Paul Zonda, the above referred to real property.

In the Proposed Decision, the claim was denied, on the record then before the Commission, upon two general grounds, first, that the alleged ownership with respect to the various links in this chain of title had not adequately been established and, second, that the sale by the claimant, in June 1954, of 45% of his interest in Kohlensaure, the top holding company, (of which sale the Commission did not become aware until November 23, 1954) appeared to have the effect of divesting the claimant of at least that portion of his claim.

Since the issuance of its Proposed Decision, the Commission has received and considered, in regard to the problem last mentioned, the affidavit of the claimant, dated December 9, 1954, and a confirming affidavit, dated December 13, 1954, of Dr. Leo Fromer, a Swiss attorney who, it is indicated, acted as the representative of the purchasers in the sale of such 45% interest. It appears from such affidavits that it was the intent of the parties to this transaction that the sale of such stock interest in Kohlensaure did not carry with it any transfer of the claimant's interest in the claim here involved; but that all of his pre-existing rights in that regard were to be reserved. The Commission is satisfied, upon the basis of the foregoing and related information in the record, that, in legal effect, this transaction did not divest the claimant of any interest in this claim which he may theretofore have owned.

The proofs, now to be considered, with respect to the questions

of ownership in the chain of title above recited are numerous and complex. As indicated above, the record now before the Commission in those respects has been augmented considerably since the issuance of the Proposed Decision.

Ownership by Claimant of Kohlensaure

The Commission pointed out in its Proposed Decision that, at the time of the taking of the Yugoslav assets, the claimant was not the nominal owner of any interest in Kohlensaure; but that it is contended that he was at that time and continuously thereafter the sole beneficial owner of Kohlensaure by virtue of a "cloaking" arrangement entered into in 1933 between him and some of his business associates, principally one Ernst Schneider, for the purpose of avoiding the consequences of the anti-Jewish measures by the Hitler regime in Germany; and that it was not until 1950 that full nominal ownership could be restored.

In this regard, the Commission has received from the claimant and has obtained, on its own initiative, a multitude of evidence and data bearing on this question, including, among other material, certified copies of the restitution proceedings referred to in the Proposed Decision, the affidavits of the claimant, dated November 20, 1954, and of Ernst Schneider, dated November 30, 1954, the "cloaking" agreements themselves, a photostatic copy of a comprehensive report prepared, originally at the request of the Property Control Division of the British Military Government offices in Germany, by Kontinentale Treuhandgesellschaft M.B.H., a Berlin auditing firm, which report (later submitted to United States Military Government authorities in Berlin) included a comprehensive analysis of the claimant's property interests in Germany (and related exhibits), a sworn certificate dated May 16, 1951, by the Industrieberatung und Pruefung G.M.B.H., which describes itself therein as a "certified corporation entrusted with the examination of business enterprises," and similar pertinent material. The Commission has also examined files of the Department of State including various reports of investigations made by the American Embassy in London, the Office of the United States Political Adviser for Germany, and other agencies of the United States Government, regarding the relationship between the claimant and the various German enterprises referred to above.

The Commission is satisfied from all of the evidence and data now before it in that regard that, at the time of the taking of the Yugoslav assets involved, the claimant was in fact the sole beneficial owner of Kohlensaure.

The Commission is also satisfied from the above evidence and related data before it that at the time of the taking of such assets

in Yugoslavia, Kohlensaure was the owner of 87.3% of the entire capital stock of Lingner.

The remaining problems of ownership in the chain of title asserted herein, therefore, are those of ownership by Lingner of the two Yugoslav corporations above mentioned and of the ownership by Odol, one of such corporations, of the real estate above described, recorded in the name of Paul Zonda.

1. Odol

It is asserted that Odol was organized in 1930 by the Odol Company of Vienna, with a share capital of 1,000,000 dinars, divided into 200 shares, and that all of the shares of Odol became the property of Lingner in 1939 when the Odol Company of Vienna was merged with Lingner.

It is further asserted that the capitalization of Odol was thereafter increased to 1,500,000 dinars; and there was submitted in support of this assertion, a letter dated November 28, 1940 from the Berliner Handels-Gesellschaft, to Bank Fuer Industrie, (Kohlensaure) indicating that pursuant to instructions "by order of Lingner Werke A.G. Berlin" the Berliner Handels-Gesellschaft had remitted 1,500,000 dinars to the Allgemeiner Jugoslawische Bankverein A.G., Belgrade in favor of Odol. It is also asserted that thereafter, in 1941, the capitalization of Odol was further increased by 2,500,000 dinars; and, in that connection, there was submitted a letter dated February 25, 1941 from Berliner Handels-Gesellschaft to Bank Fuer Industrie indicating that "by order of Lingner-Werke A.G. Berlin" the Berliner Bank had remitted 2,500,000 dinars to the same bank in Belgrade in favor of the Odol Company as "balance payment—capital increase." This latter remittance would thus appear to reflect, as of that time, a total capitalization of 5,000,000 dinars.

The claimant has also submitted a photostatic copy of a certificate, dated February 14, 1941, from the Allgemeiner Jugoslawische Bankverein A.G. of Belgrade to Lingner, to the effect that the bank then had 200 shares of Odol of the face value of 5,000 dinars each (a total of 1,000,000 dinars face value) for the account of Lingner "which were delivered to us by the Odol-Kompanija A.G. Belgrade." No similar certificate has been submitted in reference to any of the other outstanding stock certificates which presumably were issued upon the increases in capitalization above referred to. It may reasonably be inferred, however, that such shares as were issued in consideration of those capital increases were in fact issued to Lingner. It is asserted by the claimant that the certificates in this connection, located in Yugoslav banks, have apparently been lost. The affidavit, dated December 8, 1954, of Ernst Schneider, the chairman of the board

of directors of Lingner, states that Lingner was the sole nominal and beneficial owner of Odol from the time of its organization until its confiscation.

The official report of investigation received from the Government of Yugoslavia in connection with the Commission's consideration of this claim indicates that, as of the date of taking of Odol, its total capitalization amounted to 5,000,000 dinars, divided into 1,000 shares of 5,000 dinars par value each. It is also reported that none of such shares were deposited for registration with Yugoslav authorities pursuant to the Yugoslav Regulation of 1946 requiring the declaration and registration of shares in Yugoslav corporations. However, it is reported by the Government of Yugoslavia that "according to another information" (the nature of which is not specified) Lingner "had had 800 shares of Odol stock deposited with the Banking Society, Belgrade, which shares, as confiscated, were turned over to the State Investment Bank on April 24, 1946"; and the Government of Yugoslavia has stated that, if all other preconditions to an award are satisfied, an award on account of the taking of Odol should be limited to one based upon such 800 shares.

It is suggested by the claimant that the apparently missing 200 shares (which would make up the total outstanding shares of 1,000) are those referred to as on deposit with the Allgemeiner Bank, in accordance with its certificate of February 14, 1941, referred to above, and that evidently such shares were lost in some manner.

Since, as indicated in the report of the Government of Yugoslavia, none of the total of 1,000 shares was deposited for registration with it and since there is no indication of ownership of any interest by any person or firm other than Lingnerwerke, the Commission is satisfied, upon consideration of all the surrounding circumstances, that Lingnerwerke was in fact the sole owner of Odol at the time of its taking.

2. Croatian

It is asserted, in regard to this corporation, that it was organized in 1941 with an original capitalization of 1,000,000 kunas which was thereafter increased by 1,000,000 kunas in 1942, by an additional 2,000,000 kunas in 1943 and by an additional 4,000,000 kunas in 1944, thus making a total capitalization by the time of the taking of Croatian of 8,000,000 kunas. The latter amount of capitalization is confirmed in the report of the Government of Yugoslavia aforementioned which states that this capital was divided into 800 shares of 10,000 kunas par value each.

There were submitted in this connection (a) a photostat of a letter dated October 28, 1941 from the Berliner Handels-

Gesellschaft to Bank Fuer Industrie, indicating that the Berlin Bank had remitted "by order of Lingner-Werke A.G., Berlin RM 100,000—equivalent of kuna 2,000,000 . . . for disposition by the founding committee" of Croatian "for the purpose of depositing the founding capital of said firm"; and (b) a photostat of a certificate dated March 13, 1942 from Bankverein A.G., through its branch office in Zagreb, to Lingner to the effect that the bank then had on deposit to the credit of Lingner 100 shares of "Odol A.G. Zagreb" of par value 10,000 kunas each "consisting of one interim certificate dated March 1, 1942 which we received through Dr. Fran Bunck Zagreb."

It is asserted in the Statement of Claim that the capital increases of 1943 and 1944 (aggregating 6,000,000 kunas, or three-fourths of the total capitalization) "were financed for account of Lingner-Werke A.G. by trustees (not specified) who held the shares of the increased capital for account of the Lingner-Werke A.G. and were liable to account for this property to Lingner-Werke A.G. and to follow the instructions of Lingner-Werke A.G. with regard to these shares."

In this regard, as indicated in the Proposed Decision, the report of the Government of Yugoslavia states that 200 of the total of 800 of the shares of Croatian outstanding at the time of its taking were apparently owned by Lingner with the remaining ownership in the individuals named in that portion of the Proposed Decision which relates to the taking of the Croatian assets. It is added in that report that, pursuant to the Yugoslav decree requiring the registration of shares of stock, the claimant "submitted a statement of ownership for 300 shares of the Croatian Odol Inc., Zagreb, with the remark that the receipt for these shares was issued in the name of Mr. Georg Pany, a Yugoslav national." No indication of any interest of either the claimant personally or of Lingner in the remaining 300 shares (those represented in the Yugoslav Government report to be owned by Frano Mikso and Matija Vrtovec) appears in that report.

In the affidavit of Ernst Schneider aforementioned, it is stated that, at the time of the confiscation of Croatian, Lingner was the nominal owner of only 25% of its capital stock but that "75% of the capital, which represented subsequent capital increases, were held by nominees acting for and on behalf of Lingner Werke A.G."

In this regard, there has been submitted the affidavit, dated December 6, 1954, of one Josef Wastl who states that he was the "concern auditor" of Lingner who handled the organization of Croatian and that Fran Miksa and Mathias Vrtovec were "trustees" for Lingner with respect to their ownership of the specified number of Croatian shares.

In the report of the Government of Yugoslavia, it is stated that the 200 shares held by Fran Miksa were voluntarily given to the Government of Yugoslavia "as a gift." There has been submitted to the Commission, however, an affidavit of Mr. Miksa, dated December 1, 1954, in which he indicates that those shares were paid for out of funds supplied to him by Lingner and that he at all times held them as trustee for Lingner.

With respect to the 300 shares held by or in the name of Georg Pany, the Commission has also received and considered a variety of evidence, including statements from Dr. L. F. Meyer, a Swiss attorney, which indicate that Georg Pany also held such 300 shares as trustee for Lingner. The Commission is advised that Georg Pany is now deceased.

Upon all of the evidence and in consideration of the surrounding circumstances, the Commission is also satisfied with the assertion that the 100 shares which the Government of Yugoslavia has reported as formerly held by Matija Vrtovec and which were assertedly "voluntarily given as a gift to the state" were also held by him as trustee for Lingner.

Upon the record now before it, the Commission is satisfied that at the time of the taking of Croatian, sole beneficial ownership thereof was vested in Lingner.

The Yugoslav Government has urged that this portion of the claim (that based upon the taking of Croatian) should be denied in its entirety on the ground that "a property, created entirely during the war, is involved, and it may be rightly presumed that a German property is involved." While it does, in fact, appear that Croatian was created during the war and during German occupation, neither the Yugoslav Claims Agreement nor the International Claims Settlement Act of 1949 makes this circumstance a ground for denial of a claim otherwise compensable; and this contention will, therefore, have to be rejected.

3. The real property in Crna Bara held in the name of Paul Zonda

It is established that this property was acquired by Paul Zonda in 1943. It appears from various documents submitted in this connection that Paul Zonda was the managing director of the Odol Company in Zagreb; and it is asserted that this property, undeveloped agricultural land, was purchased for the purpose of growing "peppermint plants to produce peppermint oil which was to be used in the manufacturing processes of Odol Kompanija A.G. Belgrade." The contract of purchase for this property (a photostatic copy of which was submitted) was entered into on August 20, 1943 and indicates a purchase price of 345,000 dinars. Pursuant to the application required by local law, for the recording of title, the transaction of purchase was duly recorded in the

appropriate real estate registry, it being indicated in the notification of such recording (a photostat of which has been submitted) that the purchase price was 345,000 dinars.

There was also submitted in this connection a photostatic copy of a document dated January 29, 1944 entitled "Trust Agreement," which appears to be an agreement between Paul Zonda, therein described as "Director of the Odol Works d.d." and Odol, in which it is acknowledged that "Paul Zonda, acting as trustee, has bought in his own name on behalf of the Odol Works A.D. Belgrade and with its funds, the real estate" (which is then described as the parcel of real estate here under consideration).

The Commission is satisfied from the foregoing and related evidence in the record that this property was in fact acquired and, at the time of the taking of Odol, was being held by Paul Zonda as nominee or trustee for Odol, and an award will be made on account of this property, as an additional asset of Odol.

The Government of Yugoslavia has urged here again that, even assuming that this property was in fact the ownership of Odol, this item of claim should be denied on the ground that it was "property acquired during the occupation." For reasons already indicated with respect to the same contention regarding the Croatian property, the Commission is of the opinion that this contention must also be rejected.

Upon the basis of all of the evidence and data now before it, the Commission finds that, at the time of the taking of the various Yugoslav properties above described, Lingner wholly owned Odol; that Lingner also then wholly owned Croatian; that 87.3% of Lingner was then owned by Kohlensaure; and that the claimant was then the true owner of 100% of Kohlensaure. An award will be made, accordingly, to the extent of 87.3% of the value, now to be considered, of the various properties so taken.

Valuation of Odol

In this regard, the claimant has submitted an unauthenticated photostat of what purports to be the "most recent balance sheet in the possession of the claimant," that of July 31, 1944. With respect to such items therein as are of significance on a valuation as of the date of taking, the balance sheet reflects a total net valuation for land and building, machinery and equipment and other tangible personal property, of approximately 1,200,000 dinars (after deduction of stated reserves). The Government of Yugoslavia has reported that evaluation of the Odol plant property made under its auspices, in terms of 1938 prices, reflected a total of 808,618.01 dinars for the real and personal property of the corporation, it being further stated that no records of other

assets or liabilities, as of the time of taking, were available. The Commission's investigators have been unable to locate any such other records or pertinent data. However, analysis of the aforementioned balance sheet and of other relevant data indicates that consideration of any such other asset and liability items would not significantly alter the result reached by an evaluation of the tangible assets alone.

The aforementioned balance sheet of Odol apparently does not purport to include the real estate held in the name of Paul Zonda. Clearly, the aforementioned appraisal by the Yugoslav authorities does not include it. This, however, as indicated above, is an asset item which the Commission has concluded should be added, for the purposes of this determination, to the valuation of Odol.

As already indicated, the cost of this real estate in 1943, as reflected by the purchase contract, was 345,000 dinars. It is asserted, however, that the true purchase price was 1,916,108.37 dinars. This, it is said, is evidenced by the fact that a receipt dated November 18, 1943, given by the sellers to Paul Zonda (a photostat of which has been submitted) indicates the payment of 1,716,108.37 dinars in addition to a down payment of 200,000 dinars which, it is said, was made on May 29, 1943. On its face, however, the receipt does not indicate what it was given for. The down payment is evidenced, it is said, by a document dated May 29, 1943 (a photostat of which has been submitted) signed by the sellers therein named and entitled "Declaration" which purports to be an acknowledgment that the sellers "have sold today to Mr. Paul Zonda" approximately 44 yokes of land at 45,000 dinars per yoke (this would amount to approximately 1,980,000 dinars). This document recites that it is contemplated that a formal contract would be executed thereafter "upon receipt of the consent on the part of the competent authority."

Investigators for the Commission have appraised this property, in terms of 1938 values, at a total of 516,000 dinars.

Upon the basis of all of the evidence and data before it, the Commission is of the opinion that the fair and reasonable value of all of the assets of Odol (including the property held in the name of Paul Zonda) at the time of their taking, in terms of 1938 values, was 1,325,000 dinars.

Valuation of Croatian

In this regard, the claimant has submitted only what purports to be a copy of a balance sheet as of December 31, 1943, prepared in terms of kunas. The corporation is not said to have owned any real property. The Commission's investigators have been unable to locate any pertinent books or records; and the Government of

Yugoslavia has reported that its representatives were unable to locate any records except "the list of movable property, debts and claims, made during the taking over of the company's property, on July 7, 1945."

That list, it is further reported, reflected total assets, as of the date last mentioned, in terms of 1938 values, as follows:

| Assets: | Dinars |
|--|---------------------|
| Inventory, raw material, equipment, and "auxiliary" material ----- | 4,875,445.94 |
| Current account debtors ----- | 7,356.40 |
| Debtors for commodities ----- | 325.82 |
| Total ----- | 4,883,128.16 |
| Liabilities: | |
| Current account creditors ----- | 19,607.37 |
| Creditors for commodities ----- | 1,637.54 |
| Total ----- | 21,244.91 |

This list would thus reflect a net worth, as of July 7, 1945, in terms of 1938 prices, of 4,861,883.25 dinars.

Upon the basis of all the evidence and data available to it, the Commission has concluded that the fair and reasonable value of the assets of Croatian, as of the date of its taking, was, in terms of 1938 values, 4,862,000 dinars; that, as indicated above, the value of Odol (including the real property in Crna Bara) was, in the same terms, 1,325,000 dinars; and that the combined value of the property of both of the corporations involved, at the time of their taking, was thus 6,187,000 dinars.

It having been found that Lingner was the sole owner of both of the corporations involved at the time of their taking; that Kohlensaure then owned an 87.3% interest in Lingner; that the claimant was the sole beneficial owner of Kohlensaure at the time of the taking of such assets in Yugoslavia; and that neither the validity nor the amount of his claim has been affected by the recent sale of some of the claimant's interest in Kohlensaure, discussed above, an award will be made herein in an amount equal to 87.3% of the above-mentioned total sum of 6,187,000 dinars, or 5,401,251 dinars. The latter amount, converted to dollars at the rate of 44 dinars to one dollar, the rate adopted by the Commission in making such awards, equals \$122,755.70.

AWARD

Upon the above evidence and grounds, this claim is allowed and an award is hereby made to Siegfried Arndt, claimant, in the

amount of \$122,755.70 with interest thereon at 6% per annum as follows: (a) on \$26,289, on account of the taking of Odol, from February 12, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$5,557.42; and (b) on \$96,466, on account of the taking of Croatian, from February 12, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$14,588.75, or a total of interest in the amount of \$20,146.17.

Dated at Washington, D.C.
December 30, 1954.

Ownership of property.—Ownership of property is a very important issue presented in claims before the Commission, for unless a claimant establishes a proprietary interest in the property claimed, he cannot hope for a favorable decision on his claim. In the instant claim, claimant had sold a portion of his stock interests years after his claim for nationalization arose, and the question was whether he had divested himself of his claim *pro tanto*. Based upon evidence of the intention of the parties to the transaction, the Commission held that claimant had divested himself of his interest in the net worth of the entity, but had retained his rights to claim for nationalization.

It appeared in another claim that an attempt had been made by the record owner to transfer ownership of real property in Yugoslavia to claimant by a deed executed in New York, but never recorded in Yugoslavia. Under a Yugoslav decree, enacted on July 19, 1946 (Official Gazette No. 68, August 23, 1946), transfer of real property to a foreign citizen was null and void unless approved by Yugoslavia. Since such approval had not been established, the Commission ruled that claimant had acquired no interest in the property, and the claim was denied. (*Claim of Madeline Berman*, Docket No. Y-1497, Dec. No. Y-426.) The so-called *situs* rule governing title to real property is discussed in the *Claim of Manfred Sternberg*, appearing at page 60.

In a similar situation the record indicated that approval had not been obtained for the sale of land in Yugoslavia. It was concluded that neither the grantor nor the grantee was ever in a position to perform the contract. Accordingly claimant, the grantor, was deemed to be the owner of the property in 1947, when it was taken by Yugoslavia. (*Claim of Lester Popin*, Docket No. Y-337, Dec. No. Y-1462.)

Generally, ownership of real property is evidenced by a deed recorded in the pertinent land register. (*Claim of Edmond Horace Mott*, Docket No. PAN-39, Dec. No. PAN-5.) Record title, however, is not the only way to establish ownership of property.

Secondary evidence in the form of unrecorded deeds, records and admissions of the grantor, and American Consular reports was held sufficient to support ownership (*Claim of Marion Roderick*, Docket No. PAN-17, Dec. No. PAN-4), as well as receipts indicating payment of real property taxes corroborated by admissions of the grantor (*Claim of Jesse J. Cover*, Docket No. PAN-19, Dec. No. PAN-33).

Claimant's unsupported assertion was held to be insufficient to establish ownership of property, particularly in the face of contrary documentary evidence submitted by Yugoslavia. (*Claim of Vaso Turajlich*, Docket No. Y-527, Dec. No. Y-53.) Partial payment of the purchase price of real property that was not conveyed to the purchaser was likewise deemed insufficient. (*Claim of Warren E. Thorp*, Docket No. PAN-27, Dec. No. PAN-35.)

Acquisition of ownership by one person necessarily entails the loss of ownership by the previous owner. A claim involved the delivery of merchandise to a vessel for shipment to the vendee, a concern in Yugoslavia. It appeared that the vessel had cleared the port of New York, but was later directed to return, and its entire cargo was sold by the Yugoslav Government in exile. The Commission relied on the rule that title to merchandise passes at the time when delivery is made to a common carrier, unless the circumstances show a different intent of the parties. The merchandise was sold f.a.s. (free alongside ship) New York, and the intent of the parties that title pass at that time was evidenced by the record. The Commission therefore concluded that claimant, the vendor, owned no interest in the goods when they were requisitioned and sold by Yugoslavia, and the claim was denied. (*Claim of A. Daigger & Co., Inc.*, Docket No. Y-1593, Dec. No. Y-878.)

The Commission was faced with an unusual set of circumstances in another claim. Under a testator's will, his real property in Yugoslavia was inherited by his daughter, an incompetent person. Claimant and other relatives were designated as heirs only upon the earlier demise of the daughter, and title to the property was recorded in her name without mentioning the relatives. Claimant contended that legal title to the property passed to him and the other relatives upon the death of the testator in 1938, subject only to a life estate in favor of the daughter. The Commission concluded that claimant's right appeared to be a non-recorded contingent remainder which would be defeated if (1) the daughter should recover and become of sound mind, (2) claimant should predecease the daughter, (3) no property should be left at the time of the daughter's death, or (4) the daughter should die leaving issue. Accordingly, the Commission ruled that since claimant's prospects of realizing anything from the property were inconsequential, his "interest" in the property taken by Yugoslavia was too remote and uncertain to justify an award in any amount. (*Claim of Joseph Goricar*, Docket No. Y-1564, Dec. No. Y-1135.)

Establishing ownership of personal property by gift, particularly bearer shares of stock, occasionally presented a problem. It appeared in a claim that shares of stock of a Hungarian corporation and other items of property were in the custody of a business associate of claimant's father in England. By a simple

letter in 1939, claimant's father advised the custodian that his son was the owner of the assets kept in a safe deposit box in England. Claimant was not informed of these circumstances until several years later. In 1940 a new custodian was appointed by claimant's father who repeated the fact that he had given claimant a gift of the property and requested the new custodian to manage the property during claimant's minority. The safe deposit box contained 12,000 shares of the stock of which 4,440 were said to be owned by claimant's uncle. The Commission found that claimant's father had divested himself of 7,560 shares of the stock in favor of his son, the claimant. However, a different conclusion was reached concerning an additional 12,900 shares of stock in the Hungarian corporation assertedly acquired by claimant by gift in 1944. The Commission concluded that claimant's father had retained, at all times until his death on December 18, 1946, complete control over this second block of shares and had made no delivery thereof, actual or symbolic, and therefore held that no valid gift had been established. (*Claim of Peter Paul Agoston*, Docket No. Y-1478, Dec. No. Y-1363.) The related issue of pledged property appears in the *Claim of Marietta J. Poras*, at page 83.

Another case involved ownership of shares of stock assertedly destroyed during the siege of Budapest, Hungary, December 1944—February 1945. Claimant's ownership of the stock was established by decisions of a Swiss court cancelling the shares and ordering the corporation to reissue the shares to claimant. (*Claim of Mrs. Edward (Mariello) Sundstrom*, Docket No. Y-1062, Dec. No. Y-1503.)

In many cases the fear of persecution, arrest, or death motivated a transfer of bearer shares of stock for the purpose of "cloaking" the identity of the true owner. In other instances, it was clear that absolute transfer of title was intended. Thus where a father anticipated confiscation of his stock interests, he advised his son by letter that he was transferring his stock to his son. The record showed that the son had attended stockholders' meetings, and had disposed of some of the shares. The Commission concluded that a bona fide gift *inter vivos* had been effected. (*Claim of Cisatlantic Corporation, et al.*, Docket No. Y-1113, Dec. No. Y-951.)

Beneficial interest.—Occasionally legal title is vested in one person while the true owner is another. Normally such an arrangement is unnecessary; but as the *Arndt* decision indicates, a "cloaking" of title was sometimes imperative in view of the discriminatory measures that were practiced during World War II. Applying settled rules of international law, the Commission held that beneficial interest, as opposed to nominal or bare legal title, was controlling in deciding the question of ownership.

A more common example of beneficial ownership is the case of an agent who acquires title to property on behalf of his principal. This variation is also illustrated in the instant claim. The evidence of record included a "Trust Agreement" between Paul Zonda, director of Odol Works d.d., and the Odol company, in which it was acknowledged that "Paul Zonda, acting as trustee, has bought in his own name on behalf of the Odol Works A.D. Belgrade and

with its funds, the real estate." Accordingly, the Commission found that "this property was in fact acquired and, at the time of the taking of Odol, was being held by Paul Zonda as nominee for Odol."

In one claim, the Commission recited that "The valuable privilege enjoyed by United States nationals to have their claims against foreign governments espoused by the United States Government is one that must be carefully circumscribed and guarded. It is for that reason that, with increasing frequency, international claims agreements negotiated by the United States have required that the nationality test for corporate claimants be satisfied, not simply by reference to the jurisdiction in which the corporation was organized but, more importantly, by reference to the existence of a substantial and bona fide ownership interest in the corporation by individual United States citizens at the time the claim arose. This test is one which must be satisfied by proof as clear, consistent and complete as the circumstances permit." The evidence in that case was found to be insufficient to establish ownership of the property claimed and the claim was denied. (*Claim of New Jersey Industries, Inc.*, Docket No. Y-1317, Dec. No. Y-1434.)

Another claim involved the question of title to real property that had been recorded in the name of claimant's sister and brother-in-law. Claimant asserted that in 1928 he had sent \$6,000.00 to his sister and brother-in-law to purchase the property, and that it was understood by all parties that claimant was the beneficial owner. The Commission noted that claimant had filed no "primary evidence, such as receipts for the transmission of the money, which would ordinarily be retained to establish ownership of a beneficial interest in property worth such a substantial amount." On the basis of the record, the Commission held that claimant had not sustained the burden of proof, and his claim in this respect was denied. However, he received an award for the loss of other property. (*Claim of Paul Schnitzer*, Docket No. Y-1034, Dec. No. Y-922.)

The technical, legal form in which title to property is held, and the legal capacity to sue, constituting the so-called "indicia of title," must be considered of secondary importance to the question whether the interest for which espousal is sought is truly that of a United States national. Frequently, the Commission has been urged to disregard evidence of formal title in persons who would not, because of lack of United States nationality or otherwise, be qualified claimants before it, and to make awards in favor of others asserted to be the true or beneficial owners; and, in appropriate cases, the Commission has made such awards.

A claim concerned an interest in a family fund or "syndicate," that owned shares of stock in a Swiss corporation, which assertedly owned all the outstanding shares of stock in a Yugoslav corporation. It was stated that 18,949 shares of the stock held by the "syndicate" in Switzerland had been transferred to claimant in 1942, in recognition of her undivided fractional interest in the family fund. No attempt was made at the time to transmit to claimant either the share certificates or the income therefrom, and claimant knew nothing of the asserted transaction until after the

termination of the war in 1945. It appeared that the various record entries of the transaction were designed merely to cloak the shares of stock with ownership by a national of the United States, a device which was then considered best calculated to safeguard the family interests. The Commission held that on the date of loss claimant was not the owner of the 18,949 shares of stock, but was the beneficial owner of only a 5.29% interest in the family fund. (*Claim of Antonia Hatvany*, Docket No. Y-1063, Dec. No. Y-910, Final Decision.)

A similar question was presented in a claim in which shares of stock in a Yugoslav corporation were purchased by and issued in the name of claimant's brother, a resident and citizen of Yugoslavia. Claimant asserted that in making the purchase his brother had acted as his agent, that the funds therefor were supplied by claimant, and that the shares of stock were at all times regarded as claimant's property. The evidence showed that the stock had been registered with Yugoslav authorities in 1946 in the name of claimant. Further proof offered at the hearing before the Commission included oral testimony of claimant and his brother, and letters from a Swiss bank, through which some of the shares were acquired. The Commission held that claimant had established his claim of beneficial ownership to the shares of stock. (*Claim of Gus Knezevich*, Docket No. Y-338, Dec. No. Y-1123, Final Decision.)

In the Matter of the Claim of

Docket No. Y-1092
Decision No. Y-1527

MANFRED STERNBERG

Against the Government of Yugoslavia

Title to real property governed by law of place where property is situated. Under laws of Yugoslavia, title may be acquired only upon recordation in land registers, with exception of heirs who acquire title by operation of law. Claimant, having failed to fully pay for real property under purchase agreement, owned no interest in the property, equitable or otherwise, for purposes of Yugoslav Claims Agreement of 1948 and Section 4(a), Title I of the 1949 Act.

Award for nationalization or other taking of mortgaged real property measured by owner's equity, determined by deducting from value the outstanding mortgages on date of taking. Deduction accords with "applicable principles of international law, justice and equity" pursuant to Section 4(a), Title I of the 1949 Act. The mortgage itself, encumbering real property in Yugoslavia, also constituted "rights and interests in and with respect to property" under Article 1(a) of Yugoslav Claims Agreement of 1948.

PROPOSED DECISION

This is a claim for \$594,700 by Manfred Sternberg, a citizen of the United States since his naturalization on July 25, 1946, and is for the taking by the Government of Yugoslavia of real property, a mortgage on real property, rents from real property, personal property and participation units and shares of stock in business enterprises. The various items of the claim will be dealt with, *seriatim*.

REAL PROPERTY

The claimant claims \$486,000 for the taking by the Government of Yugoslavia of real property owned by him and located at Ilica Street 73, Zagreb, and registered under Docket No. 4923, Zagreb.

The Commission finds it established by certified extracts from the Land Register of the County Court of Zagreb (Docket No. 4923), filed by the claimant and the Government of Yugoslavia, and admissions of that Government, that claimant owned 2 parcels of land with an area of 3,577 square meters, with structures on the parcels, when they were taken on April 28, 1948, pursuant to the Second Nationalization Law of April 28, 1948 (Official Gazette No. 35 of April 29, 1948).

As corroborating evidence of value, claimant has submitted the affidavits of Eugene Schwarz and Blanka Cooper, former Zagreb residents, who swear that the building was located in one of the most prominent business sections of the City of Zagreb and that its value in 1940 was between 7 and 8 million dinars. In addition, claimant has filed the affidavit of his brother, Felix S. Sorell, who took part in the transaction in which the property was bought. He swears: "The total purchase price paid [in 1940] by the claimant was 8,100,000 dinars—4,000,000 dinars paid at the time of the bidding to the Court; 100,000 dinars paid to Ante Pecina for his fee; 500,000 to Ernest Kardos; 50,000 dinars to the deponent as lawyer fees, and the balance to the bank. The annual net rental income from the above property was about 500,000 dinars." Claimant has also filed statements by "Court Certified Experts," Ing. Stjepan Gombos and Ing. Gjuro Kastl, who state that the square on which the property is located connects the business section with the residential section, that rents from buildings in the section are almost as high as in the very heart of the shopping section, and that the prices of lots there in the year 1936 were 3,000 dinars per square meter.

A three-party committee designated by local authorities has appraised the property at 5,080,452 dinars on the basis of 1938

values. An investigator for this Commission has evaluated the property at 7,000,000 dinars as of the year 1938.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of the property was 7,000,000 dinars as of the year 1938.

The above-mentioned extracts from the Land Register record two mortgages on the property—one in the amount of 230,000 dinars with 8% interest per annum in favor of Lucy Sternberg and Mario Sternberg and one in the amount of 2,000,000 kunas in favor of the Credit Institute for Trade and Industry in Ljubljana. The latter mortgage was entered on December 1, 1941.

The Government of Yugoslavia has filed a certified copy of a document executed by claimant on January 15, 1941. By this instrument claimant accepted promissory notes in the amount of 2,000,000 dinars in favor of the above-mentioned Credit Institute and agreed to mortgage the real property for 2,000,000 dinars with 6% interest in favor of the Credit Institute. As mentioned, on December 1, 1941, the Credit Institute obtained recordation of the mortgage in Croatian kunas and not in dinars and without interest. It is to be observed that in December 1941 the dinar currency had been withdrawn by the occupation authorities and, instead of the dinar currency, kuna currency was put in circulation at the rate of 1 kuna for 1 dinar.

With respect to this transaction, claimant has filed an affidavit by Felix Sorell, who was claimant's lawyer in connection with the sale by claimant of his stock in the Tvornica Zeste I Pjenice d.d., Savski Marof to the Credit Institute. The affiant swears:

At the final stage of the negotiations and all details had been agreed on, it was raised as a technical consideration the question of whether any tax obligations could arise in the future against Tvornica zeste i Pjenaice d.d. based upon the period of Manfred Sternberg's ownership. It was admitted by both sides that there were no known tax obligations as of that time and further it was very well known that the Tvornica paid their tax obligations very punctually. Still the buyer knowing the purpose of the sale, and as it was usual in his experience as lawyer that the buyer wanted to always be protected against any tax obligations, after some discussion it was agreed that Manfred Sternberg would issue all necessary instruments and insure the buyer against eventual later proposed and unpaid taxes, but to get the full purchase price less Dinars 2,000,000, until such time as Manfred Sternberg furnishes other security. To avoid this kind of agreement in the formal purchase contract, the claimant issued notes in the amount of Dinars 2,000,000. About November 1940, after the formal transfer of the Tvornica, the claimant acquired

on auction the real property at Ilica 73, at Zagreb, and fulfilled his obligations, to the buyer.

The deponent stated that the claimant did not receive any money for or at this transaction except the purchase price for the stocks and that the entry of the mortgage was given only as security for eventual taxes.

Claimant has also filed a letter dated November 12, 1954 addressed to him from the Consulate General of Yugoslavia, in New York City, which states:

This is to advise you that this Consulate General is in receipt of an official communication of the National Bank of the Federal People's Republic of Yugoslavia, Headquarters for the Republic of Slovenia in Ljubljana, dated November 2, 1954, certifying that the claim of the former Institute for Credit and Industry in Ljubljana for Kunas 2,000,000.—with which your former property in the City of Zagreb, registered under Book of Deeds Entry No. 4923, was encumbered, does not exist any longer and that the aforesaid Bank has by its letter No. 215/53-Z HD—6-XVII 3 of January 26, 1953, given permission for the cancellation of the mortgage.

We conclude, therefore, on the basis of the evidence, that the only mortgage encumbering claimant's realty was that in the amount of 230,000 dinars with 8% interest per annum, and no evidence has been filed indicating it has been satisfied.

In the circumstances, we are of the opinion that a deduction for the mortgage must be made. In arriving at this decision we have not failed to consider that the claimant may be obligated to satisfy the debt for which the mortgage was given as security. However, the likelihood that the claimant herein, or that any claimant whose Yugoslav property was mortgaged, will be called upon to do so seems sufficiently remote as to be practically non-existent. Suits on the mortgages may be barred by time limitations; the mortgagees, if Yugoslav financial institutions, have either been nationalized or liquidated; the mortgagor and mortgagees may reside in different countries with the result that suits or payments may be impracticable; any recovery by the mortgagees from the mortgagor may be limited to 10% of the debt because of the pre-war debt devaluation law of October 27, 1945 (Law on Settlement of Pre-War Obligations, as amended, Official Gazette No. 88, November 13, 1945; Official Gazette No. 66, August 16, 1946); or, finally, the mortgagees, if citizens of the United States, may look to this Commission for compensation for the loss of their security.

The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act to apply (1) the terms of the Agreement with that country and

(2) the applicable principles of international law, justice and equity, in that order. The Agreement contains no specific provision regarding mortgages. We have found no applicable decisions of arbitral tribunals, international or domestic, having responsibility for the determination of claims which were satisfied by the payment of a lump sum. (Because of the comparatively recent acceptance of lump sums in settlement of large blocks of international claims, it is doubted that there are reported decisions directly in point.)

It is our view that justice and equity to all claimants require a deduction for mortgages under the circumstances involved in the claims before us, whether the property was taken before or after the above-mentioned Yugoslav debt settlement law became effective. The lump sum of \$17,000,000 has been provided for the satisfaction of all claims. As the claims filed aggregate many times that amount, the fund may be insufficient to pay all claims allowed in full. In these circumstances we believe we are obligated to limit our awards to actual proven losses and not to make awards for contingent losses which may never materialize. We also believe that when many claimants have to share in a fund which may prove inadequate, one claimant should not receive a windfall or be enriched at the expense of other claimants. That would be the case if a claimant who was awarded the full value of his property made no payment on the mortgage, or satisfied the mortgage debt by payment of only 10% of the mortgage pursuant to the Yugoslav debt settlement law. Accordingly, we hold that, in the absence of evidence that a mortgage of record has been satisfied, a deduction for the mortgage must be made in order to reflect the actual amount of claimant's loss. We find that the proper amount to deduct for the mortgage, including interest, in this claim is 285,200 dinars and that amount will, therefore, be deducted from the value of the property.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of claimant's interest in the above real property was 6,714,800 dinars as of the year 1938. That amount converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon 1938 valuations, equals \$152,609.09.

In his original Statement of Claim, claimant asserted a beneficial ownership interest in a building located at Trenkova Ulica 9, Zagreb, registered under Docket No. 4375, Zagreb, and the amount of his claim for such interest is \$8,000. The basis of his claim is that he was the successful bidder for the property at a tax auction conducted on February 4, 1941 by District Court No. 1, Zagreb. He alleges that the court rendered a decree on that day

confirming sale to claimant as the successful bidder, and that pursuant to the decree he paid two installments of 200,000 dinars each on the total purchase price of 800,000 dinars. He further alleges that "since, pursuant to the said decree, formal transfer and entry of title was dependent upon payment of all installments of the said 800,000 dinars," he claims a property interest to the extent of his payments, his departure from Yugoslavia and the German invasion making it impossible to complete the remaining payments.

The transaction is confirmed by affidavits by his brother, Felix Sorell, Ervin Miller and Robert Goldstein, an heir of the seller. Subsequent to filing the claim, claimant, through his then attorney, requested that this item of the claim be amended to reflect the following theory:

The said fund of 400,000 dinars was deposited by the court to the credit of claimant in a depository and thereafter returned to claimant by operation of law. Thereafter the fund was "taken" by the Yugoslav Government by the law on nationalization.

We shall treat these as alternative bases of claim.

Certified extracts from the Land Register of the County Court of Zagreb (Docket No. 4375, Cadastral District of Zagreb). filed by claimant and the Government of Yugoslavia, record ownership in Julius Goldstein & Bros. prior to entry of ownership in the name of the State of Croatia and subsequently, in the name of the Government of Yugoslavia. The question arises whether under these facts claimant had an equitable interest in the property.

Ownership of real property is determined by the law of the *situs* of the property. Beale, *The Conflict of Laws*, § 50.1, p. 292; *Goodrich on Conflict of Laws* (Hornbook), 3rd Ed., p. 454. Thus, in *The United States of America on Behalf of John Bezanos v. The Republic of Turkey* (Opinions 250, 260, American-Turkish Claims Settlement), it was stated: "It is recognized throughout the world that all incidents of the ownership of real property are governed by the law of the place where the property is situated."

The real property involved here is located in Croatia, where the provisions of the Austrian Civil Code of 1811 were in force. By Section 322 of that Code, where land registers or similar registers are established, the legal possession of a right in real property can be acquired only by a regular entry in the public books. And by Section 131, in order to transfer the ownership of real property, the acquisition thereof must be recorded in public books established for that purpose.

With one exception, Yugoslav law does not recognize equitable ownership in real property, and the law is strict in this respect.

The exception is that persons may acquire real property from a decedent's estate through his heirs, and they may record the ownership of land as if it had been acquired from the decedent himself. The rule is, furthermore, that the record owner of real property is considered to be the legal owner as against the whole world—except, of course, as against the sovereign—and any rights acquired by a third person which are less than legal title are at most contractual rights against the record owner.

We conclude, therefore, that claimant acquired no equitable interest in the property. Moreover, claimant concedes that he had no right to transfer title to himself on payment of the installment, but that "formal transfer and entry of title was dependent upon payment of all installments." Therefore, we hold that he acquired no "rights and interests in and with respect to the property," as those words are used in Article 1 of the Yugoslav Claims Agreement of 1948.

As to the alternate basis of claim, claimant has filed no evidence whatsoever that the 400,000 dinars he paid at the auction were taken by the Government of Yugoslavia. Having failed to meet the burden of proof with respect to this item of the claim, it must be denied.

Claimant also asserts sole beneficial ownership and, on information and belief, sole legal ownership of 3 to 4 thousand meters of land located at Miramarska Cesta, Zagreb, for which he claims \$36,000. The circumstances of the transaction by which he acquired the property are alleged to be that prior to its sale in 1940 to Kreditni Zavod, Ljubljana, claimant was the sole owner of the stock of Tvornica Zeste I Pjenice Prve Makso (Max) Mayer, D.D., Zagreb (hereinafter referred to as "Savski Marof"), which owned the real property in question. In the sale to Kreditni Zavod, he alleges, the real property here involved was excepted and, on information and belief, claimant states the property was formally transferred to him. The transaction is confirmed by an affidavit of claimant's brother, Felix Sorell, and by a letter and affidavit executed by Wilhelm Nemenz, a former manager of an enterprise conducted by the Kreditni Zavod. In his affidavit the latter swears that he took part in the sale of Savski Marof to the Kreditni Zavod. He adds:

According to the relevant land-registry, "Savski Marof" were owners of a plot located at Miramarska cesta, Zagreb. It had been agreed that this plot should remain, in fact the property of Mr. Manfred Sternberg, but under the circumstances prevailing at that time in Yugoslavia, it was impossible to carry out this provision in an official manner, as this would have meant that neither "Savski-Marof" nor Manfred Sternberg would

have retained the plot, which would have been confiscated as Jewish-owned property.

Extracts from the Land Register of the County Court of Zagreb (Docket No. 6264, Cadastral District of Zagreb), submitted by claimant, record ownership in Savski Marof prior to the taking of the property by the Government of Yugoslavia pursuant to the Agrarian Reform Law of August 23, 1945, as amended on March 18, 1946 (Official Gazette Nos. 64 of August 28, 1945 and 24 of March 22, 1946).

Section 434 of the Austrian Civil Code provides:

If the transferor does not appear personally and in all cases involving city or a nobleman's property, the transfer agreement [of ownership in real property] must be executed in writing and signed by the parties to the agreement and by two men worthy of belief as witnesses.

This provision was changed in 1931 and since that time it is necessary that the agreement be signed before a notary public or before the court if the value of the property exceeds 1,000 dinars (Sections 36 and 37 of the Law regarding Proceedings in Real Property Transactions, effective in Croatia since January 1, 1931). From this Section, as well as Sections 431, 432 and 433, it is apparent that agreements with respect to real property or rights in real property must be executed in writing. Silent agreements by implication, oral agreements, and other agreements not executed in writing are not enforceable. Such agreements may, however, under certain circumstances give a cause of action for damages as between the parties. They would not, however, substantiate a cause of action for the transfer of property or for any reservations made with respect to real property.

For the reasons previously set out, we hold that claimant, not being the record owner, was not the legal owner, and could not be the equitable owner, since such ownership is not recognized under the law of the *situs* of the property. Furthermore, in the absence of a written agreement duly executed we hold that he had no right to transfer the property to his own name. Therefore, we find that claimant owned neither the property nor rights and interests therein, and this item of the claim must, also, be denied.

MORTGAGES ON REAL PROPERTY

Claimant asserts a mortgage interest in the amount of 200,000 dinars on property registered in the name of Dr. Radoslav Kis in which the latter owned a two-thirds interest. He alleges he acquired this property interest in 1929-1930, that the mortgage obligation was defaulted and that he later instituted foreclosure

proceedings. The amount of this item of the claim is \$4,000. In the aforementioned affidavit of Felix Sorell the affiant swears:

That the claimant had a mortgage interest for a loan given to Dr. Radoslav Kis in the amount of 200,000 dinars.

The mortgage was on a one-story building, Banski Trg. of the City of Varazdin, which belonged to Dr. Radoslav Kis.

The Government of Yugoslavia has filed a certified extract from the Land Register of the County Court of Varazdin (Docket No. 127, Cadastral District of Varazdin), covering property described as "House #1056 in 'Banski Trg.' with yard and 2 gardens in 'Banski Trg.'" The extract records ownership of a two-thirds interest in Dr. Radoslav Kis. Examination of this extract fails to show any mortgage recorded in favor of the claimant, and no mortgage is recorded against the property in the amount of 200,000 dinars.

We conclude that claimant has failed to sustain the burden of proof with respect to this item of the claim, and it must be denied.

Claimant also asserts ownership of a one-half interest by inheritance from his son, Mario Sorell, deceased, in the latter's one-half interest in two mortgages recorded on real properties registered under Docket Nos. 4923 and 6264, Zagreb. The amount of this claim is not stated.

Certified extracts from the Land Register of the County Court of Zagreb (Docket No. 4923, Cadastral District of Zagreb), filed by the Government of Yugoslavia and by claimant, show that Mario Sternberg (Sorell) owned a one-half interest in a mortgage in the amount of 230,000 dinars with 8% interest per annum. The land extracts show that the real property and the mortgage recorded under Docket No. 4923 were nationalized on April 28, 1948, pursuant to the Nationalization Law of April 28, 1948, *supra*.

As to a mortgage recorded in favor of claimant's deceased son, Mario Sorell, on property registered under Docket No. 6264, Zagreb, the certified extract from the Land Register for this property, filed by claimant, does show an encumbrance in the amount of 200,000 dinars in favor of Mario and Lucie Sternberg. However, that extract also shows that it has been cancelled both under this docket number and also under the "main entry" under Docket No. 3502, Zagreb. Its cancellation is further confirmed by an extract furnished by the Yugoslav Government which shows the cancellation of this mortgage entry. The claim with respect to this mortgage is, therefore, denied.

As evidence that he inherited an interest in his deceased son's property, claimant has filed the affidavit of Klara Frankl. The

affiant swears that she is the great-aunt of Mario Sternberg (Sorell) who died in France in 1944 while in action as an American soldier; that she knows that claimant and his wife had only two children, a daughter Lucy, and a son Mario; that she is fully acquainted with the circumstances of the death of Mario and knows that at his death he was a minor and unmarried and died without leaving a will. In addition, claimant has filed the affidavit of his brother, Felix Sorell, who has corroborated the statements in the affidavit of Klara Frankl.

We conclude that claimant has shown that his deceased son died prior to the taking of the mortgage and that he died leaving him surviving his father, (claimant), and his mother and sister. Under the law of the *situs*, which is governed by the Austrian Civil Code of 1811, effective since 1853, each parent would inherit a one-half interest in the property of the decedent under these facts. We conclude, therefore, that claimant inherited a one-fourth interest in the mortgage. Therefore, the value of his interest in the mortgage recorded under Docket No. 4923, Zagreb, was 71,300 dinars, including interest.

Under the laws of Yugoslavia, mortgages on real property are considered to be real property and persons who succeed to real property by inheritance, such as claimant herein, are obligated to pay inheritance taxes on the value of the property (see Law Concerning Direct Taxation, effective January 1, 1946, Article 24, Official Gazette No. 854, November 20, 1945). The People's Court is prohibited from transferring title to the heirs unless and until such inheritance taxes are paid. (Revised Law Concerning Direct Taxation of August 14, 1946, Article 64, Official Gazette No. 67, August 20, 1946). Thus, the value under local law of an heir's interest in real property must be regarded as being the value of the property less the inheritance taxes charged against it and which must be paid before the transfer of title can be accomplished. As awards may be made only for the value of the property taken or, as is the case here, for the value of an interest in property, a deduction must be made for inheritance taxes.

Under the applicable tax law (Inheritance and Gift Tax Law of March 18, 1947, Official Gazette No. 25, March 26, 1947), the tax on property valued at 71,300 dinars is 11% (if inherited by a direct ancestor) or 7,843 dinars. That amount deducted from the value of the property leaves 63,457 dinars. We conclude that the value of claimant's interest in the mortgage was \$1,412.20.

RENTS FROM REAL PROPERTY

The claimant claims the loss of income from the real property located at Ilica No. 73, from July 25, 1946, the date on which he

became a citizen of the United States, until July 19, 1948, the date of the Yugoslav Claims Agreement of 1948.

We have held that this property was taken by the Government of Yugoslavia on April 28, 1948, and, accordingly, after that date the property was owned by the Government of Yugoslavia, and not by claimant. Accordingly, no right to income from the property would accrue to claimant after the date of taking. However, claimant may be compensated in terms of interest for the loss of the use of the compensation he was entitled to receive on the date the property was taken, from the date of taking to the date of payment by the Government of Yugoslavia. Both the Agreement with Yugoslavia and the International Claims Settlement Act contemplate the allowance of interest by the Commission for the delay in payment of compensation by the Government of Yugoslavia.

The remaining period for which claimant claims the loss of income from the real property is from July 25, 1946 until April 28, 1948, the day of taking. Claimant has filed a statement dated November 9, 1951 by Ing. Stjepan Gombos and Ing. Gjuro Kastl, "Court Certified Experts" of Zagreb, who state that from May 1945 to date the property was administered by "the Administration for Government Buildings, 1st Precinct" and that from May 1945 on rents were reduced fifty percent.

We conclude that claimant has proved that rents were taken by the Government of Yugoslavia prior to the taking of the property and we must determine the amount so taken between July 25, 1946 and April 28, 1948.

The claimant alleges that the annual rental income from the property was approximately 480,000 dinars, and Felix Sorell in his affidavit swears that the net annual rents were about 500,000 dinars. Lacking explicit evidence as to the amount of rents so taken and relying on the information available as to the net income from the property, we conclude that the amount of rents taken by the Government of Yugoslavia between July 25, 1946 and April 28, 1948 was \$5,000. The date of taking of the rents will be considered to be April 28, 1948, the date when the final increment is assumed to have been taken.

PERSONAL PROPERTY

The claimant alleges the taking by the Government of Yugoslavia of office furniture and equipment in a three-room office he maintained in a building owned by his wife, Lilly Sternberg, at Jelacic Trg. 15, Zagreb. In addition, he claims the taking of furniture removed from Castle Janusevac, Savski Marof, and stored

in a storage room in the same building. The amount of the claim for such property is \$6,500.

With respect to this claim, the claimant alleges:

In 1940, because of the German anti-Semitic pressure, I sold the 100% of the stock of above named factory in Savski Marof to Ljubljana The sales agreement provided that I was entitled to remove from the castle Janusevac whatever I wished to remove. I took the most valuable pieces from there and had them stored in Zagreb, in the building Jelacic-Trg. 15, on the second floor, next to my office.

In 1941 the Chief of the Ustashi Police by name of Cerovsky, drove up with police trucks and took away *everything*.

The furniture of my office was also taken away.

Claimant has filed the affidavit of Klara Frankl, who swears: "That the furniture, pictures, etc. were taken away in May 1941 by order of the Chief of the Ustasi Police." In the affidavit of Felix Sorell with respect to the personalty removed from Janusevac, this affiant also states: "These same articles were taken away by order and in the presence of the Chief of the Ustasi police in Zagreb. The deponent was also present."

The "Ustasi" referred to was the militia of the State of Croatia. We have held previously that the taking of property by the State of Croatia and damage to property while under its control and administration, are not compensable under the Yugoslav Claims Agreement of 1948 (Decision No. 993, *In the Matter of the Claim of Socony-Vacuum Oil Company, Inc.*, Docket No. Y-304). Furthermore, even if such a taking were otherwise compensable here, he was not at such time a national of the United States and his claim would not be within the jurisdiction of the Commission for reasons which will subsequently be set out.

Claimant, however, alleges that ownership rights in the property were restored to claimant in 1945 by the Yugoslav Government by operation of Yugoslav laws and decrees and were thereafter nationalized or otherwise taken by the Government of Yugoslavia "as of July 19, 1948."

In this connection, it may be observed that by a law of November 9, 1941 of the Independent State of Croatia (No. XXXCCCVI-1699-Z.p.), the property of Jewish persons and enterprises was confiscated. However, on February 3, 1945, Yugoslavia enacted a decree entitled "Decree on the Repeal and Avoidance of All Legal Provisions Enacted by the Occupiers and Their Helpers During the Occupation, on the Validity of Decrees Rendered During That Period, and on the Annulment of Legal Provisions Which Were Effective at the Time of Enemy Occu-

pation" (Official Gazette No. 4 of February 13, 1945). Article 1 of the Decree recites: "Legal provisions (laws, decrees, instructions, regulations, and the like) enacted by the occupation authorities or by their helpers during the enemy occupation are repealed and declared to be void."

In its report on this part of the claim the Yugoslav Government reports:

. . . it has been investigated that it could not have been verified that any personal property of the Claimant had been taken over by the Yugoslav authorities, for the reason that the People's Committee of the City of Zagreb in 1945 was taking over under its management the property taken during the occupation at the public notice under which the holders of these things were obliged to deliver the same. On that occasion it could not have been evidenced to whom the things had belonged formerly. In case some other things belonging to Mr. Sternberg had been among these personalities the Claimant should state and prove it.

Claimant has filed a copy of an undated statement addressed to the People's Committee of the City Interior Department, Criminal Section, Zagreb. In this statement he says he recognized a clock in a watchmaker's shop window at the corner of Republic Square and the street leading to the Kaptol as being his own. He further stated that the proprietor said that the clock had been brought in by a woman living at Varsavska No. 14, Zagreb. Assuming these statements as being factual, this is no evidence that the Government of Yugoslavia took the clock or that it was in its possession. Indeed, the statement suggests that the clock was in the hands of a private individual.

Claimant has also filed an "Official Attestation" dated December 30, 1952 by the Director of Art and Trade Museum, Zagreb. This official states:

During the time of occupation, the Museum bought from the inventory of personal property in the mansion "Janusevac" a set for breakfasting (white furniture painted with green decorations), received under No. 520/1942 of the journal, and under inventory No. 8649.

After the occupation, by way of the Commission for the Collection and Protection of Cultural Monuments and Antiques of the Ministry of Education, P R Croatia—No. 330/46 (the documents are in the archives of the Preservation Institute in Zagreb), the museum had taken over several damaged items from the storeroom in Savski Marof, having their origin in "Janusevac," but have not yet been entered in the inventory of the museum.

However, even assuming that claimant has proved that the Government of Yugoslavia took this property "after the occupa-

tion," he was not at that time a citizen or national of the United States, as he did not acquire United States citizenship until July 25, 1946.

The Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia settled "all claims of nationals of the United States" for the "nationalization or other taking by Yugoslavia of property" (Article 1), provided they were nationals of the United States "at the time of nationalization or other taking" (Article 2). It expressly excluded nationals of the United States "who did not possess such nationality at the time of the nationalization or other taking" (Article 3). Since claimant was not a national of the United States at the time of taking, his claim was not settled by the Agreement of July 19, 1948, and it is not, therefore, within the jurisdiction of this Commission, and is denied.

Claimant also claims \$10,000 for 30 wooden crates of medical instruments and laboratory equipment stored by him at his former enterprise at Savski Marof which he alleges were taken by the Government of Yugoslavia on December 5, 1946.

The Yugoslav Government states that this personalty was plundered and carried off by the authorities installed on Croatian territory "by the occupator" during the war and it denies taking any of this over after the liberation.

The Yugoslav Government has filed a statement dated January 3, 1953 by Srecko Pandic, who states:

I remember well that in factory warehouse, in the building of the old distillery, near the garage, which building at present is no longer standing, before the war there was warehoused sanitary material, medical instruments and laboratory equipment. The key of that warehouse and the care of this material was entrusted to the former employee Albin Boncelj, deceased.

During the NDH [the Independent State of Croatia], and that after the publication of confiscation of Jewish property, I saw crates of this material were being loaded on trucks by some civilians, but I had no contact with those men.

In addition this Commission's investigator reports that the medical instruments and laboratory equipment stored at Savski Marof were taken by the German army and the State of Croatia.

As we have stated above, a claim for the taking of property by the State of Croatia is not within the jurisdiction of this Commission. We likewise hold that a taking of property by German military forces is not within our jurisdiction. The Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia, settled claims for "the nationalization and other taking by Yugoslavia of property" (Article 1).

It is our view that a taking by forces such as these is not a nationalization or taking of property by the Government of Yugoslavia. Furthermore, claimant was not at the date of taking a national of the United States. Therefore, this item of the claim must be denied.

BUSINESS HOLDINGS

The claimant alleges that he owned fifty percent of the total stock of C. A. Pachany I Sin Nasljednici D.D., Brod, N/S, Yugoslavia (hereafter referred to as "Pachany"), the total capital stock of which was 1,250,000 dinars. He has filed an "interim bearer stock certificate" of the company, and alleges that he can produce the remaining stock certificates evidencing his fifty percent stock ownership. The amount for this item of the claim is \$12,500. Felix Sorell, in the affidavit filed by claimant, confirms claimant's "possession" of fifty percent of the Pachany stock and swears that the purchase price was 625,000 dinars. In addition, claimant has filed the affidavit of Ervin Miller, who swears:

That he lived for about 20 years, until 1939, in the city of Slav Brod, Yugoslavia. That he was managing director of C. A. Pachany i sin nasljednici d.d. founded in 1862; this was a leading firm in distillation of plum brandy and was located near the main railroad station. That the stocks paid high dividends all the years except the last three years when the company enlarged the inventories and improved the method of production. That the real value of the stocks was double of their nominal value.

In its report on this item of the claim, the Government of Yugoslavia concedes that claimant owned fifty percent of the stock of Pachany. However, it asserts that the company was liquidated during the period of 1930-1938 when the liquidation proceedings were finally concluded, "after which there remained nothing, and the buildings were destroyed by bombs during the war operations" and the land on which the buildings had been situated was deserted. This Commission's investigator confirms that the Company was liquidated in 1938 and that the buildings remaining after liquidation were entirely destroyed during the war. He also confirms that the land still remains unused and has not been taken by the Government of Yugoslavia.

As we have pointed out, the Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia settled claims for "the nationalization and other taking by Yugoslavia of property" (Article 1). War damages caused by military action is not in our view a "nationalization" or "taking" of property by the Government of Yugoslavia. We, therefore, hold

that claims for war damage of the sort involved herein were not settled by the Agreement of July 19, 1948, and are not within the jurisdiction of this Commission.

Accordingly, this part of the claim is denied for the reason that claimant has not shown that any property of Pachany was taken by the Government of Yugoslavia.

Finally, claimant claims \$13,200 for the taking of the property of Centralna Rafinerija Poljoprivrednih Pecara Zeste Kao Zadruza, Brod N S, Yugoslavia (hereafter referred to as "Centralna"). Claimant alleges that he was one of the founders of and the manager of Centralna, which was a co-operative of small agricultural distilleries. He alleges, further, that he acquired eleven participation units in the company out of a total of fifty-five, thus having a one-fifth ownership interest in the enterprise; and that each unit had a face value of 100,000 dinars.

In support of his allegations, claimant has filed the affidavits of Adolph Philips, Felix Sorell and Ervin Miller. Adolph Philips swears as follows:

That he knows from personal knowledge that Mr. Manfred Sternberg was the founder, and for many years the manager of a Co-operative in Brod N/S, Croatia (Yugoslavia) by the name of "Centralna Zadruza Units." Deponent's late brother, Philip Philips, was a member of the Board of Directors and very active in this Co-operative, the purpose of which was to refine and produce by a patented process 200-proof alcohol, which was being used as motor fuel with an admixture of gasoline, according to Yugoslav regulations. Among the most important customers were Standard Oil and Shell Co. Deponent and his late brother Philip were also members of the Co-operative, since they owned two agricultural distilleries. There were altogether 55 co-operative units, with a face value of Dinars 100,000 (i.e. \$2,000) each. To start with, only Dinars 50,000 were paid in, and the remaining 50% were paid in later on. At a later date the capital was decreased to Dinars 60,000 per unit. Mr. M. Sternberg, who was in the alcohol manufacturing business, owned 11 co-operative units. He and deponent's late brother Philip bought one distilling apparatus from the Lang Corp., Budapest, Hungary, built according to a patent of the Destillerie de Deux Sevres in France, which apparatus alone cost U.S. \$30,000. The tec. Engineer, Mr. Grossman, who supervised its installation and later on came to the United States—at a much later date than deponent—told the latter that the apparatus had been removed from Brod N S after the war and installed in a factory located in Sisak, Yugoslavia, owned by the Yugoslav government and formerly known as "Peter Teslic."

Felix Sorell declares:

That the claimant was the founder of Centralna Rafinereja, Zagreb. That he possessed eleven participation units of it and that the value of each unit was originally 100,000 dinars and that they were depreciated to 60,000 dinars.

Finally, Ervin Miller swears:

That he was well acquainted with the operation of the Centralna Rafinereja, which was located in the vicinity of the mentioned C. A. Pachany, and that he was very often in the plant. It was a dehydrating ethyl alcohol plant with the best and finest equipment.

... That he knew that the claimant was one of the main shareholders beside Mr. Gjorge Ledere. That he knows that the claimant paid for his shares in different periods about 1,000,000 dinars, he does not remember exactly because it is almost 20 years since.

However, apparently inconsistent with his position that he owned five out of fifty-five units of Centralna, claimant has filed a photo-copy of a "protocol" of the eleventh regular assembly of the owners of units of Centralna held on December 14, 1940. Included in the "List of Co-operative Members on December 31, 1940" is the claimant with two units out of fifty. This document shows that he had previously returned one unit. Likewise, claimant has filed a photo-copy of a decree of April 8, 1942, issued by the State of Croatia, confiscating his two units in Centralna, which are said to be worth 60,000 kunas each.

As to claimant's ownership of the stock, the Government of Yugoslavia has filed a statement dated December 14, 1953 by A. Carrnelluti, who states: "I know that Manfred Sternberg had two co-operative shares which he, before his departure to America, gave as gift to a person unknown to me, so that he, before the beginning of the war, had no more shares in this Cooperative." However, as set out above, claimant has filed persuasive evidence that he owned two units in Centralna as late as April 8, 1942, when they were confiscated by the State of Croatia.

The Yugoslav Government reports that Centralna owned real property registered under Docket No. 1053, Brod, but that the buildings, machinery, etc. were largely destroyed by bombing during war operations. The taking of the remaining property, including that in a damaged condition, is conceded by the Government of Yugoslavia. This Commission's investigator reports that 80% of the buildings and equipment were destroyed by bombing during the war.

Lacking explicit evidence as to the date Centralna was taken, it will be assumed that it was taken on December 5, 1946, pursuant to the Law Regarding Nationalization of Private Economic

Enterprises of December 5, 1946 (Official Gazette No. 98 of December 6, 1946).

As to the value of the property of Centralna taken by the Yugoslav Government, a three-party committee designated by local authorities has appraised the undamaged property on the basis of 1938 prices, and their total appraisal is 896,274 dinars. No valuation for property destroyed by bombing was included. We have previously held that a claim for war damage is not within the jurisdiction of this Commission, and consequently it was proper to exclude the value of destroyed property. This Commission's investigator reports that the Yugoslav valuation of the property of Centralna taken by the Government of Yugoslavia is fair and reasonable.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of the property of Centralna which was taken by the Government of Yugoslavia was 896,274 dinars as of 1938.

The land extract for real property registered under Docket No. 1053, Brod, and which was owned by Centralna, records two mortgages, one in the amount of 650,000 dinars with 8% interest per annum and 1½% commission quarterly in favor of the Yugoslav Bank, Inc. (formerly the Croatian Land Bank Inc., Zagreb), and one for 3,300,000 kunas in favor of Alfred Carrnelluti. According to the Law covering the Exchange Rates for the Withdrawal of Occupation Currency and the Settlement of Obligations in the Territory of Croatia, *supra*, 1,000 Croatian kunas were exchanged for 7 Yugoslav dinars. The mortgage of 3,300,000 kunas became, therefore, a mortgage of 23,100 dinars, and the total of the two mortgages was 673,100 dinars, with 8% interest per annum plus 1½% commission quarterly on the mortgage for 650,000 dinars. For the reasons previously set forth, we find that the proper amount to deduct for the mortgages including interest is 946,100 dinars and that amount will, therefore, be deducted from the value of the property.

Since the appraised value, 896,274 dinars, is less than the value of the mortgages, claimant suffered no loss by the taking of his interest in Centralna, and therefore no compensation will be awarded him with respect to this item of the claim.

ITEMS NOT INCLUDED IN CLAIM

Claimant has not included the following items of property in the claim "because of his present inability to substantiate his ownership" and "relies on the equity and justice of the Commission in giving weight thereto":

1. 150,000 Dinars of bank stock in Udruzena Banka, D.D., Zagreb, acquired in 1937;
2. 35,000 Dinars balance of savings accounts in Banovinska Stedionica, Zagreb, and Prva-Hrvatska Stedionica, Zagreb;
3. A stamp collection valued at \$5,000;
4. Assorted valuable personal items, such as jewelry, watches, etc. of a value of \$2,500 located in a safe in Jelacic Trg. 15, Zagreb.

The Yugoslav Government reports that claimant had on deposit with the Udruzena Banka, D.D., Zagreb, 2,761 preferred shares of the bank at 50 dinars per share face value, amounting to a total of 138,050 dinars, which were given as collateral security for a loan he had with the Bank. It further reports that these shares were returned to him on October 20, 1938, when he repaid his debt to the Bank. As to the claim for a 35,000-dinar balance in savings accounts in the former Banovinska Stedionica, Zagreb, the Government of Yugoslavia reports that investigation could not establish the existence of such an account. Finally, that Government asserts that the stamp collection and valuables were "plundered and carried off by the authorities installed on the Territory of PR [People's Republic of] Croatia by the occupator, during the war" and had not been taken by the Government of Yugoslavia "after the liberation."

The Commission's investigator reports that local public officials confirmed that the 2,761 preferred shares of bank stock were returned to the claimant in 1938; that no trace of the 35,000-dinar balance in savings accounts could be found in the Banovinska Stedionica Zagreb and Prva-Hrvatska Stedionica, Zagreb; and that no trace of the personal property could be found; local public officials stating that the German occupation army and the Independent State of Croatia had taken the personal property of the claimant.

While claimant has not filed a claim for this property, such a claim would not be established even if it were filed. Accordingly, no considerations of equity or justice are present to merit an award for such property.

AWARD

On the above evidence and grounds, this claim is allowed to the extent indicated, and an award is hereby made to Manfred Sternberg, claimant, in the amount of \$159,051.29 with interest thereon from April 28, 1948, the date of taking, to August 21,

1948, the date of payment by the Government of Yugoslavia, in the amount of \$3,006.71.

Dated at Washington, D.C.

November 22, 1954.

Law of the situs.—One of the principal elements of a compensable claim is ownership of the property claimed. As a general rule, ownership implies a proprietary interest in property including dominion, control, and the right to use and sell the property. This is to be distinguished from a tenancy in which possession may be transferred to the tenant under certain conditions pursuant to a contract, while legal title remains in the lessor. Ownership interests in real property may be established in a number of different ways, as indicated in the notes to the *Claim of Siegfried Arndt*, appearing at page 37. Irrespective of the means employed, the determination as to ownership was governed by the laws of the place where the real property was situated pursuant to the *lex loci rei sitae* rule, universally recognized under domestic and international law. Thus, inheritance rights with respect to real property depended upon this *situs* rule, which is discussed in the *Claim of Anthony Kampf, et al.*, appearing at page 67. The same principle was applied to claims involving usufructuary rights, life estates and remainder interests, as illustrated in the *Claim of Anny Aczel*, appearing at page 81.

A claimant asserted that he had obtained in 1941 title to certain improved real property from his father by an instrument in writing, purporting to be an agreement of transfer or donation, which was neither witnessed, notarized, nor recorded, but only signed by the father. The Commission held that this document was clearly defective as a binding instrument since there had been no acceptance by claimant. Pursuant to the governing provisions of the Austrian Civil Code of 1811, as amended, a document of that nature was required to be in writing. It was noted that claimant's father had remained in undisturbed possession of the property until 1945, and that there had been ample opportunity to have the document acknowledged by claimant, notarized, and offered for recording. The Commission concluded that claimant had not established an ownership interest in the property, and the claim was, therefore, denied. (*Claim of Rudolf Treco, Jr.*, Docket No. Y-1186, Dec. No. Y-796.)

In another case, it was alleged that claimant had acquired by oral agreement certain real property as dowry upon her marriage, but that her ownership interest was never recorded due to certain legal difficulties. The Commission applied the *situs* rule, and concluded that claimant owned no interest in the real property or any right with respect to the property. Her claim in this respect was therefore denied. (*Claim of Anna Langenecker*, Docket No. Y-591, Dec. No. Y-1371.)

There were a number of claims for real property owned by husband and wife jointly or by one of them. It was not unusual for a married woman to consider that her husband's property also belonged to her, or for a married man to conclude that as the family provider all property of the family truly belonged to him. In one such case, the property had been recorded in both names, in equal shares. Since the wife was not a national of the United States on the date of taking by Yugoslavia, her claim was denied and her husband was granted an award for his one-half interest. In objecting to this finding in the Proposed Decision, the husband urged that the recording of title in both names was merely a matter of convenience, and that at the very least it was a tenancy by the entirety so that he was seized of the entire property because his funds were used to acquire the property. Again, the Commission applied the *situs* rule, and noting that a tenancy by the entirety is not recognized in civil code countries, such as Yugoslavia, it was concluded that they were tenants in common. Accordingly, the Proposed Decision was affirmed. (*Claim of William Burger, et al.*, Docket No. Y-1055, Dec. No. Y-788.) The issue of nationality, which adversely affected the wife's claim, is discussed in the *Claim of Jerko Bogovich, et al.*, appearing at page 18.

Under the laws of Yugoslavia, the validity of a contract transferring real property depended upon consent of the government. Where such consent was not obtained, the contract failed and title remained in the purported seller. (*Claim of Lester Popin*, Docket No. Y-337, Dec. No. Y-1462.)

The rules of the civil law in effect in Yugoslavia were invoked in another case. Claimant's husband died testate in the United States and left surviving his widow (the claimant) and seven children. By the terms of his will, all of his real property was devised to the claimant. Three children, residents of the United States, filed waivers and consented to probate. The remaining four children, residents of Yugoslavia, were not cited nor did they file waivers or consents. The Commission found that the four children in Yugoslavia had the right, under the law of the *situs*, to elect to take, against the will, one-half of their intestate share. The Commission therefore reduced the award to claimant accordingly. (*Claim of Ljuba Pfaff*, Docket No. Y-1801, Dec. No. Y-1202.)

Under the laws of Croatia, a person who disappeared during World War II was presumed dead after two years, provided that at least one year had passed since cessation of hostilities. Applying this law, the Commission held that claimant's sister might be presumed to have died before April 28, 1948 when the property in question was taken by Yugoslavia, and granted claimant an award for his inherited interest. (*Claim of Oscar Glueck*, Docket No. Y-287, Dec. No. Y-1235.)

Beneficial interest under the law of the situs.—Beneficial interest in general is discussed in the *Claim of Siegfried Arndt*, appearing at page 39. As will be noted in the *Sternberg* claim, claimant asserted that he had acquired a beneficial interest in certain real property in Zagreb as the successful bidder at a public auction who paid a portion of the purchase price, and that

conditions in Yugoslavia prevented him from making further payments. He claimed a property interest to the extent of his payments. The Commission noted that under the laws of Yugoslavia, equitable interests are not recognized, and therefore that claimant owned neither an equitable nor beneficial interest in the property. Another portion of the claim involved other real property which claimant assertedly owned pursuant to an oral agreement. In both instances, claimant's contention that he owned beneficial interests was rejected, and the claim was denied in these respects.

Mortgages.—The questions presented by claims involving mortgages are best understood in the light of the *Claim of Virginia Howard* (appearing at page 115), in which the Commission concluded that unsecured creditor claims were not within the purview of the Yugoslav Claims Agreement of 1948.

The Commission ruled in the *Sternberg* claim that justice and equity to all claimants required a deduction for mortgages whether the property was taken before or after the effective date of the Yugoslav debt settlement law of October 27, 1945 (Official Gazette No. 88, November 13, 1945). This ruling conformed with Section 4(a) of the 1949 Act which directed that decisions be determined in accordance with "applicable principles of international law, justice, and equity." The Commission felt obligated to limit its awards to actual proven losses and not to make awards for contingent losses which might never materialize. Recognizing that many claimants had to share in a fund which might prove inadequate, the Commission reasoned that one claimant should not receive a windfall or be enriched at the expense of other claimants, which would be the case if a claimant who was awarded the full value of his property made no payment on the mortgage, or satisfied the mortgage debt by payment of only 10% of the mortgage pursuant to the Yugoslav debt settlement law.

For these reasons, outstanding mortgages were deducted in determining the value of the mortgagor's equity. In the absence of evidence that a mortgage of record had been satisfied, a deduction for the mortgage was made to reflect the actual amount of the mortgagor's loss. (*Claim of Michael Lindenbach*, Docket No. Y-1776, Dec. No. Y-872.)

Mortgages in favor of Italian banks on property in areas incorporated into Yugoslavia on September 15, 1947 pursuant to the treaty of peace with Italy were deemed to be owned by Yugoslavia and were deducted. (*Claim of Emanuel Herzog*, Docket No. Y-381, Dec. No. Y-504.) The *de minimis non curat lex* rule was applied, so that mortgages of insignificant amounts were disregarded. (*Claim of Helen Bubenheimer*, Docket No. Y-1122, Dec. No. Y-821.)

Many claims were filed by Americans who had interests in mortgages on property taken by Yugoslavia. As will be noted from an examination of the Yugoslav Claims Agreement of 1948, no provision concerning mortgages was included. The Commission allowed claims for mortgages on the ground that the taking of the encumbered property effectively took from the mortgagee the right to foreclose the mortgage, which constituted the taking of a

right and interest in and with respect to property. Moreover, under the laws of Yugoslavia, a real property mortgage was immovable or real property. (*Claim of Erna Lina Klein*, Docket No. Y-861, Dec. No. Y-541.)

The same rules that governed mortgages in claims filed by mortgagors were applied to claims based on the loss of mortgages. Thus, the value of a mortgage was determined as of the date of taking of the encumbered property, following the holding in the *Claim of Joseph Senser*, appearing at page 149. The Yugoslav debt settlement law, which reduced the value of debts including mortgages, did not affect the value of dinar mortgages taken before this law went into effect. (*Claim of Emma Brunner*, Docket No. Y-1281, Dec. No. Y-1130.)

So-called inheritance mortgages, resulting from settlements of inheritance proceedings, were expressly exempt from the Yugoslav debt settlement law, thereby preserving the original values of such mortgages; and the value of a mortgage was increased by the amount of unpaid interest on the date of taking, employing the interest rate stated in the mortgage. (*Claim of Christine Linden*, Docket No. Y-421, Dec. No. Y-625.) However, the laws of Serbia had a three-year statute of limitations with respect to interest on loans. Accordingly, the amount of unpaid interest on a real property mortgage in Serbia was limited to three years. If a mortgage was taken after the effective date of the Yugoslav debt settlement law, the resulting amount was reduced by 90%. (*Claim of Charles B. McDaniel, Jr.*, Docket No. Y-1226, Dec. No. Y-582.) A discussion of the currency revaluation laws of Yugoslavia appears in the *Claim of Anton Tabar, et al.*, at page 129.

Adhering to the rule of the *situs*, the concept of an equitable mortgage was not recognized, and such claims were denied, just as claims for equitable ownership interests. (*Claim of Ernest Moser*, Docket No. Y-1194, Dec. No. Y-351.)

The Commission was faced with the question whether to deduct mortgages that had been satisfied and paid after the encumbered property had been taken. A claimant filed a certificate from the National Bank of Yugoslavia, dated November 20, 1954, indicating that the mortgage debt had been satisfied. The Commission held that the certificate did not establish that the debt had been satisfied prior to August 17, 1947, the date of taking of the encumbered real property, and that satisfaction of a lien subsequent to the date of taking would have no bearing on the value of claimant's interest in the property on the date of taking. (*Claim of Irene Huber*, Docket No. Y-1293, Dec. No. Y-1523, Final Decision.)

Problems arose in connection with mortgages placed on commercial properties by Yugoslavia for unpaid taxes and war profits. Where the mortgage appeared to exceed the value of the enterprise it was held to be confiscatory and disregarded by the Commission. Similarly, mortgages recorded by Yugoslavia while under government administration and without knowledge or consent of the owners of the properties affected were also ignored in determining the values of the properties on the dates of taking. (*Claim of Corn Products Refining Company*, Docket No. Y-1205,

Dec. No. Y-1352; *Claim of Lionello Stock*, Docket No. Y-377, Dec. No. Y-1431.)

As indicated in the *Claim of Mile Smiljanic, et al.*, appearing at page 88, title to property acquired pursuant to discriminatory measures during World War II was held to be invalid. For the same reasons, mortgages placed on properties by occupation authorities during the war were considered null and void. (*Claim of George Spitzer*, Docket No. Y-1107, Dec. No. Y-1429.)

In the Matter of the Claim of

Docket No. Y-758
Decision No. Y-961

ANTHONY KAMPF, ET AL.

Against the Government of Yugoslavia

Inheritance rights, although not recorded in land registers, constituted "rights and interests in and with respect to property" under Yugoslav Claims Agreement of 1948 and Section 4(a), Title I of the 1949 Act.

Unpaid inheritance taxes deducted in determining awards under Section 4(a); however, taxes of insignificant amounts disregarded pursuant to de minimis non curat lex rule.

PROPOSED DECISION

This is a claim for \$1,500 by Anthony Kampf and Helen K. Peters, nee Kampf, citizens of the United States since January 19, 1914 and June 7, 1918, respectively, the dates of their birth at Chicago, Illinois, and is for the taking by the Government of Yugoslavia of their respective one-fourth interests in two parcels of land located near the center of the town of Srbski Cernja, as recorded under Docket No. 524 of the Cadastral District of Nemacka in the name of their deceased father, Anton Kampf.

Claimant has filed no evidence of ownership, but requested the Commission to obtain such evidence through the Government of Yugoslavia. According to a certified extract from the Land Registry Office of the County Court in Zrenjanin filed by that Government and an admission of that Government, Anton Kampf (claimants' father) was the owner of a one-half interest in two parcels of land, being parcels 805 279b and 806 279, described as building lots, with an area of 516 square fathoms, as recorded under Docket No. 524 of the Cadastral District of Nemacka Cernja. The recorded owner of the remaining one-half interest in that property was the claimants' mother, Barbara B. Kampf;

a claim for that interest was filed by her in a separate proceeding (Docket No. Y-576).

The Government of Yugoslavia admits, and the land extract shows, that the property described therein was taken by that Government on February 6, 1945 pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2 of February 6, 1945).

Claimants allege that Anton Kampf, the recorded owner of a one-half interest in the above property, died intestate in the City of Chicago, Illinois, on January 19, 1920 and that there was no administration upon the estate in Yugoslavia or Illinois. As evidence of the date of death, claimants filed a certificate of death showing that Anton Kampf died on January 19, 1920. Claimant, Anthony Kampf, also filed an affidavit in which he swears:

He is the claimant . . . and . . . the son of the late Anton Kampf who died . . . on January 19, 1920 . . . that his father . . . was married only once and then to Barbara B. Kampf, the mother of this claimant . . . that there were two children born of the said marriage, to wit Anthony Kampf and Helen K. Peters . . . when Anton Kampf died, he left him surviving his widow, Barbara B. Kampf, and his two children, Anthony Kampf and Helen K. Peters. Anton Kampf left no will and there was no probate of his estate because there was nothing to probate.

On the basis of the above evidence, the Commission is satisfied that claimants' father died intestate on January 19, 1920 and at the time the property was taken he was the recorded owner of a one-half interest therein. Accordingly, the decedent's interest in the real property would pass to his heirs in accordance with the laws of intestacy at the situs of the real property.

The real property owned by Anton Kampf at the time of his death was located in the "Vojvodina area" where there is no code governing the descent and distribution of real property. Such descent and distribution is governed by the Hungary law which, in effect, states:

In case deceased died intestate all his property, both inherited and acquired, is inherited by his children in equal shares.

The surviving wife is entitled to a dower comprising the usufruct for life of the entire estate of the husband.

Upon consideration of the evidence filed, the Commission is satisfied that Anton Kampf left surviving him a wife and two children. Accordingly, each would be entitled a share in the property in accordance with the above law. However, Barbara B. Kampf, a national of the United States since January 27, 1941, the date on which she was naturalized by the United States

District Court for the Northern District of Illinois, assigned to these claimants her life estate interest "in that portion of the property which they inherited from my late husband and their father, Anton Kampf, which property is recorded in the Cadastral District of Nemacka Cernja, Docket No. 524."

The Commission is well aware that under the laws of Yugoslavia, the right to legal ownership of inherited real property must be determined by a judicial proceeding in that country. However, the Commission is also of the opinion that even though no such proceedings were had, the heirs of the decedent have certain rights and interests in and with respect to the property which could culminate in legal ownership, and that those rights and interests were included in the agreement between the governments of the United States and Yugoslavia.

As evidence of value, claimants filed the affidavit of their mother who states that she and her deceased husband had sent approximately \$11,000 to \$12,000 to her father-in-law from time to time for the purpose of purchasing property for them. Claimants also furnished receipts totaling \$1,710 for some of the money sent to her late father-in-law. No evidence was filed as to what part of this money was used for the purchase of the property claimed. Claimants state that the property had a value of \$3,000 at the time of the inheritance and that this information was obtained from their grandfather at that time. A three-party commission appointed by local Yugoslav authorities and an investigator for this Commission independently appraised the claimants' interests in the above property, in accordance with 1938 prices, the former at 1,500 dinars and the latter at 6.150 dinars.

Under the laws of Yugoslavia, persons who succeed to real property by inheritance, such as claimants herein, are obligated to pay inheritance taxes on the value of the property; however, the Commission is of the opinion that in cases of this type, it should follow the principle of *de minimis non curat lex* and accordingly determines that no deduction should be made for the inheritance taxes.

Upon consideration of all the evidence before it, the Commission finds that a fair and reasonable value of the claimants' interest in the property, as of the year 1938, was 6,438 dinars which converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon valuations for that year, amounts to \$146.59.

Claimants' counsel has requested the Commission in writing to determine his fee. An agreement of record authorizes a fee of 10% of the award.

AWARDS

On the above evidence and grounds, this claim is allowed and an award is hereby made to Anthony Kampf and Helen K. Peters, nee Kampf, each in the amount of \$73.30 with interest thereon at the rate of 6% per annum from February 6, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, each in the amount of \$15.57.

The Commission determines that 10% of the total paid pursuant to such award shall be paid to Clifford K. Rubin, counsel for claimants.

Dated at Washington, D.C.

June 25, 1954.

Inheritance rights.—Many claims involved issues concerning inheritance rights with respect to real and personal property owned by persons who died intestate. Frequently, legal title to real property remained recorded in the names of the deceased owners because no proceedings had been initiated to administer their estates. The Commission adhered to the *lex loci rei sitae* rule and determined the interests of heirs in real property pursuant to the laws of Yugoslavia governing descent and distribution, which rule is discussed in the *Claim of Manfred Sternberg*, appearing at page 60. Applying “principles of international law, justice, and equity” pursuant to Section 4(a) of the 1949 Act, the Commission recognized that eligible heirs acquired non-record ownership interests in the property. As indicated in the *Kampf* claim, the Commission held that such interests constituted “rights and interests in and with respect to property” within the meaning of the Yugoslav Claims Agreement of 1948. However, the interests of heirs in personal property depended upon the laws of the domicile of the deceased. Therefore, the same laws were applied to real and personal property if the domicile of the deceased was Yugoslavia. A claim against Yugoslavia, being in the nature of a chose in action, constituted personal property. Accordingly, if the owner of real property died after his property was taken, his heirs inherited personal property.

There were numerous cases in which the date of death of the owner of real property was crucial, particularly where he was not a national of the United States. Pursuant to the provisions of the Agreement, a claim was not compensable unless it was owned by a national of the United States on the date of taking and continuously thereafter until July 19, 1948, the effective date of the Agreement, an issue discussed in the *Claim of Jerko Bogovich, et al.*, appearing at page 18. Claims of heirs of real property owners who were not nationals of the United States and died after the dates of taking were, therefore, denied. Obviously, if

real property was owned by a nonnational of the United States who died before his property was taken, his nationality was immaterial.

The laws of Yugoslavia governing descent and distribution of property were not uniform throughout the country. In some areas of Yugoslavia the laws of Hungary were applicable, and in others the Civil Code of Austria or Serbia.

Real property situated in the Vojvodina area of Yugoslavia was governed by former Hungarian customary law. In effect the law provided that all property of the deceased, both inherited and acquired, was inherited by his children in equal shares; and if there were no children but a surviving spouse, the spouse inherited all acquired property of the deceased, while inherited property reverted to the deceased's predecessor in interest. Applying the foregoing, the Commission held that the surviving spouse inherited all the property of the deceased because the deceased left no issue and his property had been acquired by purchase. (*Claim of Barbara Schusztter*, Docket No. Y-454, Dec. No. Y-904.) However, where a deceased was survived by a spouse as well as children, the property of the deceased was held to have been inherited by the surviving children in equal shares. (*Claim of Philip Dussing, et al.*, Docket No. Y-1730, Dec. No. Y-898.)

Property in Croatia was governed by the Austrian Civil Code of 1811, as amended. Although recognizing that under Yugoslav law legal title to real property in Zagreb does not vest in the heir until the issuance of an inheritance decree by the local probate court, the Commission held, nevertheless, that the right to inheritance was embraced within the term "rights and interests in and with respect to property" as used in Articles 1 and 2 of the Yugoslav Claims Agreement of 1948. (*Claim of Slavica Flesch*, Docket No. Y-1290, Dec. No. Y-892.)

With respect to real property in Serbia, the Civil Code of Serbia of 1844 was controlling. The Commission noted that under that law inheritance rights vest upon the date of death of the deceased property owner, but title to the property is not so recorded until a judicial determination is made by a court of competent jurisdiction. (*Claim of Bella Gabay*, Docket No. Y-1065, Dec. No. Y-1491.)

In Panama, the Civil Code of Panama of 1927 governed descent and distribution. That Code provided that estates of foreigners located in Panama pass according to the laws of Panama even though the decedent is domiciled in a foreign country at the time of his death, and that real estate, in default of testamentary disposition, passes to the surviving widow and children in equal shares. (*Claim of Lela E. Phillips, et al.*, Docket No. PAN-51, Dec. No. PAN-60.)

Assignment—renunciation.—The provisions of the Austrian Civil Code of 1811, as amended, in force in Slovenia from 1916 to 1945, were applied by the Commission in determining claimant's interest in property located in Kocevje and recorded in the name of her mother who died intestate in Yugoslavia in 1943. As one of four surviving children, claimant initially acquired a one-fourth interest in the property by inheritance. Subsequent assign-

ments of the other three-fourths interests from her brothers and sister, the other co-heirs, were recognized by the Commission. Since all of the heirs were American citizens, nationality was not in issue. (*Claim of Anna Wanda Davidson*, Docket No. Y-1778, Dec. No. Y-1070.)

Renunciation of inheritance rights was construed as an assignment. A claimant who had renounced his inheritance rights in favor of his brother was denied relief because the renunciation was unconditional and was executed before the property was nationalized or taken by Yugoslavia. (*Claim of Dragutin Domac*, Docket No. Y-440, Dec. No. Y-466.) Moreover, a renunciation, like an assignment, was held to be effective as of the date of renunciation and not the date of death of the deceased property owner. (*Claim of George S. Kaufer*, Docket No. Y-1672, Dec. No. Y-895.) Since claims against Panama were also governed by Title I of the 1949 Act, the same principles were applicable in that claims program. The extent of a claimant's interest was recognized as including interests of other heirs which they had assigned to her. (*Claim of Christina Anderson*, Docket No. PAN-54, Dec. No. PAN-22.)

Community property.—Ownership of a claim in which the record owner died intestate in California in 1945, many years after his real property in Panama had been “taken,” was determined pursuant to the community property laws of California. The surviving spouse was held to have succeeded to the claim to the exclusion of the decedent's daughter. (*Claim of Mayme V. Veale*, Docket No. PAN-44, Dec. No. PAN-40.) A claim against Yugoslavia based upon the confiscation of bank deposits was treated similarly. The owner of the bank account, domiciled in California, died intestate after the confiscation. The Commission noted that under California community property laws, personal property acquired by either spouse after marriage and situated outside the state is considered the separate property of the acquiring spouse if the two parties were not domiciled in California at the time of acquisition (which was true in this case). Therefore, the Commission held that the claim was the separate property of the deceased, and applied the intestacy laws of California. (*Claim of Franz B. Schick, et al.*, Docket No. Y-315, Dec. No. Y-1439.)

Inheritance taxes.—Under the laws of Yugoslavia persons who succeeded to property by inheritance were obliged to pay inheritance taxes. Article 1(c) of the Yugoslav Claims Agreement of 1948 contained a reverter clause in favor of Yugoslavia in the event there was a balance of the funds remaining after payment of awards and adjudication costs. Yugoslavia took the position that inheritance taxes were in the nature of unsatisfied liens against such properties and that their values should be reduced by the amount of the unpaid inheritance taxes. In the instant *Kampf* claim the Commission acknowledged that unpaid inheritance taxes should be deducted in the evaluation of property. However, due to the small amount involved, the taxes were disregarded pursuant to the *de minimis non curat lex* rule. Where the amount of the unpaid inheritance tax was significant, an

appropriate deduction was made. (*Claim of Helen Devich*, Docket No. Y-697, Dec. No. Y-800.)

In some cases claimants paid the inheritance taxes after the property had been taken. The Commission held, nevertheless, that the inheritance tax was deductible in computing the award, reasoning that "to give effect to payment of inheritance taxes after the time of taking would be to permit claimants to take advantage of a rate of exchange which may be as much as six times more favorable than that at the time of taking." (*Claim of Frank K. Reichsman*, Docket No. Y-1663, Dec. No. Y-1495.)

An exception to the rule that inheritance taxes be deducted was made in the case of claimants who qualified under the Yugoslav law as companies or associations established for scientific, artistic, educational, medical, social, cultural, or physical cultural purposes. (*Claim of Estate of Stephen G. Talia, Deceased*, Docket No. Y-1627, Dec. No. Y-1348.)

Not only inheritance taxes but also other types of encumbrances on real property existing on the date of taking were deducted in computing awards. This matter is discussed in the *Claim of Manfred Sternberg*, appearing at page 62.

In the Matter of the Claim of

Docket No. Y-1277
Decision No. Y-1440

ANNY ACZEL

Against the Government of Yugoslavia

Usufructuary interest in property in Yugoslavia as well as life estates and remainder interests constituted "rights and interests in and with respect to property," under Article 1(a) of Yugoslav Claims Agreement of 1948 and Section 4(a), Title I of the 1949 Act.

Value of usufructuary interest of widow in husband's property determined to be less than that of life estate because restricted to income from property during widowhood and terminated upon remarriage under laws of Yugoslavia. Values of life estates and remainder interests determined by applying Makehamized mortality tables prescribed by Treasury Department for collection of gift and estate taxes.

PROPOSED DECISION

This is a claim for \$347,001 by Anny Aczel, a citizen of the United States since her naturalization on September 5, 1946, and is for the taking by the Government of Yugoslavia of the property of Backa Fabrika Secera of Novi Sad (hereafter referred to as "Backa"), a Yugoslav corporation. The claim is based on the

direct ownership of 9,583 shares of Backa, a life interest in 2,500 shares of Backa owned by her two children, and the indirect proportionate ownership of 3.83% of Backa through the ownership of 5,741 shares of Szolnok Sugar Mills, Ltd. (hereafter referred to as "Szolnok"), a Hungarian corporation. These various interests of claimant will be dealt with *seriatim*.

OWNERSHIP

(a) Claimant's direct ownership of 9,583 shares of Backa.

The claimant alleges that her husband, Ede Aczel, a Hungarian national and resident, who died testate on June 6, 1931, owned during his lifetime 11,953 bearer shares of the 125,000 shares of outstanding stock of Backa. Before his death, she alleges that he delivered to her 5,500 Backa shares as an advance upon, or partial payment of, her legal right to receive from her husband one-half of the assets of the "earning community" of the marriage. Thus, at his death her husband owned 6,453 shares of Backa, and she has filed an inventory of the securities owned by the decedent at his death listing these 6,453 shares. Of this number, she alleges that she inherited 3,953 shares. In addition, the claimant alleges that she purchased on her own behalf 130 Backa shares. The acquisition of all the Backa shares owned by her was, therefore, as follows:

| | <i>Number of shares</i> |
|---|-----------------------------|
| Advanced to claimant by her husband ----- | 5,500 |
| Inherited from her husband ----- | 3,953 |
| Purchased on her own behalf ----- | 130 |
| | <hr/> |
| Total ----- | 9,583 |

The amount claimed with respect to these shares is \$310,201.

As to the location of the stock certificates, in January 1939, the claimant sent the certificates for 9,000 shares of stock from Budapest to her son, George Aczel, in London. All were deposited with the Westminster Bank, Ltd., of London, 7,500 in the name of the claimant and 1,500 in the name of George Aczel as his own property. As is confirmed by a letter of January 25, 1954, from the Westminster Bank, Ltd., it deposited the claimant's 7,500 share certificates with the Yugoslav Embassy in London on December 10, 1946 for exchange, pursuant to the laws of Yugoslavia. (See Decree of June 17, 1946, Regarding the Issuance and Registration of Shares of Stock, Official Gazette No. 50 of June 21, 1946.) The fact of their deposit with Yugoslav authorities in London, under claimant's name, is also confirmed by a

letter of October 24, 1953, from the National Bank of Yugoslavia which has been filed with the Commission.

With respect to other Backa shares owned by claimant, certificates for 500 shares were deposited in her custody deposit account in The Hungarian General Creditbank, Budapest, as is attested by a letter from the Bank to the claimant, dated December 21, 1946. By letter to claimant of February 28, 1947, the Bank informed claimant that these certificates had been deposited with Yugoslav authorities in Budapest.

In addition, claimant has filed evidence that the certificates for 453 shares of stock of Backa owned by her were deposited in the National Bank, Budapest, and "were removed forcibly by the army of occupation" during the war and that legal proceedings were instituted in Budapest to establish her ownership of them. Further, in December 1946, her attorney in Budapest declared to Yugoslav authorities in the name of her daughter, Mrs. Erich Olsen, nee Agnes Aczel, that they were the property of the daughter. By a letter to claimant of July 17, 1947, from her daughter, the latter states that the 453 shares were inadvertently declared to be her (the daughter's) property in the declaration filed by the attorney, Dr. Miklos Hoffmann. In addition, Hoffmann filed a declaration with Yugoslav authorities on behalf of claimant that claimant owned 1,000 shares of Backa destroyed during the siege of Budapest and that legal proceedings had been initiated to establish her ownership. These shares (Registration Nos. 116,501 to 117,000 and 117,501 to 118,000) were deposited with the First Savings Bank Association of the Town of Pest, Budapest, according to an undated letter to claimant from the Bank.

Finally, claimant alleges that the certificates for the 130 shares of Backa, which she purchased on her own behalf, were probably kept in the Backa office in Novi Vrbas, Yugoslavia, but she is unable to account for their destruction or delivery to Yugoslav authorities.

Thus, it appears that claimant has filed corroborating evidence as to the acquisition of 9,453 shares of Backa and has accounted for the destruction or delivery to Yugoslav authorities of the share certificates. No corroborating evidence, however, has been offered as to the acquisition of 130 shares, allegedly purchased on her own behalf, nor have the certificates been accounted for.

On the basis of all the evidence, we conclude that claimant has proved acquisition and continued ownership of 9,453 bearer shares of Backa.

(b) Claimant's life interest in 2,500 shares of Backa owned by her children.

Claimant alleges that she also has a life interest in 2,500 shares of Backa stock which were owned by her children, George Aczel and Agnes Aczel Olsen, and which were inherited from their father, Ede Aczel, deceased. The amount claimed for this interest is \$30,100.

In support of this contention she has filed two affidavits on foreign law by Ernest Wittmann, who attests that claimant has a right of income from property inherited and received by the two children from their father. He quotes from a bill incorporating the provisions of the common law of Hungary in effect at the death of Ede Aczel and throughout the 1930's as follows:

Article 1781 provides that all heirs acquire the inheritance, limited by the *jus viduale* [widow's right as hereafter specified].

Article 1812. The widow, if she is not the heir, is entitled to the usufruct [income] of the estate of her husband during her widowhood, i.e., the income during her life from the inheritance of the heir (as well as from her own one-half of such earning community estate of the husband).

Article 1813. The descendant of the *de cujus* [the decedent] is entitled to claim the restriction of the *jus viduale*, i.e., a right to claim that the income from the inheritance of the descendant shall not be paid after determination of such claim, in part or in whole, to the widow during her life, and that such inheritance shall be by such determination relieved of the future burden of such income payment to the widow.

Article 1814. If the *jus viduale* is restricted, the widow is entitled to the usufruct [income] from an adequate part of the estate [inheritance]. This part is determined in such a way that if possible the widow shall be able to continue to live in accordance with the social position of her husband, from the income of the estate. In determining the amount of the widow's income, due regard is to be paid to the circumstances of the widow, and of the amount she received as her part of the earning community or in other ways without compensation from her husband's estate.

In connection with the "restriction" mentioned above, the claimant swears that there has been no restriction at any time since her husband's death in 1931 of her right to the income from property inherited and received by the children from their deceased father. The claimant has furnished an affidavit of June 1, 1951 by her son, George Aczel, in which the affiant stated "For my part, I have always recognized that my mother was entitled to the dividends paid by the Backa Company upon my 1,500

shares of the said stock and until the interruption of the war, the dividends declared and paid annually by Backa Company from and after the death of my father upon my said 1,500 shares were in fact received by my mother as part of her own income to which she was fully entitled." An affidavit of June 7, 1951 by the claimant's daughter, Agnes Olsen, which was filed with the Commission contains a statement that "I further certify that under Hungarian law applicable to the estate of and inheritance from my father, my mother Anny Aczel now an American citizen residing at 125 East 50th Street, New York City was as my father's widow entitled to receive during her lifetime all income from my inherited portion of the community property of my father as received by me at his death, including specifically the income from my said 1,000 shares of Backa stock; and prior to the immigration of my mother and myself from Hungary and the interruption of international payments occasioned by the late war, my mother did in fact receive annually after my father's death all dividends declared and paid by Backa upon my said 1,000 shares of such stock and that she is now entitled under such Hungarian law to receive all such income thereon during her lifetime or until a court of competent jurisdiction shall have otherwise decreed."

While we accept the affiant's statement of foreign law as correct, we do not agree with claimant that she held a life interest in such property. Article 1812 quoted above states that a widow is entitled to the income of the estate of her deceased husband "during her widowhood." Thus limited, her interest is less than a life estate, as it may be terminated at any time by remarriage.

We next inquire as to whether she has proved the ownership of Backa stock by her children, as she alleges that her son, George Aczel, owned 1,500 shares of Backa and her daughter, Agnes Aczel Olsen, owned 1,000 shares.

As previously stated in part (a) above, of the 9,000 shares sent to George Aczel in London in January 1939, 1,500 share certificates were deposited in his name in the Westminster Bank, Ltd., of London. The claimant has filed a letter dated January 20, 1951, from the Bank to George Aczel confirming the deposit of his 1,500 shares of Backa and their delivery to the Yugoslav Embassy on December 10, 1946, pursuant to Article 7 of the Yugoslav Decree of June 17, 1946, *supra*.

As to the 1,000 shares owned by Agnes Aczel Olsen, claimant's daughter and a citizen of Denmark, the certificates for them were deposited with the First Hungarian Savings Bank of Pest, Budapest. Claimant has filed a declaration of October 1, 1947, executed on behalf of her daughter, by her attorney, Dr. Miklos Hoffmann,

filed with Hungarian authorities pursuant to a decree of that Government. The Declaration states that Agnes Aczel Olsen owns 1,000 shares of Backa; that the certificates were destroyed in the siege of Budapest, and that proceedings are pending to cancel the certificates. Claimant has also filed a certificate of October 4, 1947, issued by the Department of Securities of the First Hungarian Savings Bank Association of Pest, Budapest, that on January 14, 1947, it filed a declaration with Yugoslav authorities pursuant to Yugoslav decree concerning 1,000 shares of Backa owned by Agnes Aczel (Registration Nos. 117,001 to 117,500 and 116,001 to 116,500). The certificate adds that cancellation of the shares in judicial proceedings is pending.

We conclude on the basis of the evidence that claimant has proved the acquisition and continued ownership of 2,500 bearer shares of Backa by her children, George Aczel and Agnes Aczel Olsen. We further conclude that claimant has proved that she held a life interest in such shares terminable upon her remarriage.

(c) Claimant's indirect proportionate ownership of 3.83% of Backa through the ownership of 5,741 shares Szolnok.

Claimant bases her eligibility with respect to the Szolnok shares on Article 2 (C) of the Yugoslav Claims Agreement of 1948, providing that claims settled in Article 1 include those indirectly owned by a United States national through interests, direct, or indirect, in one or more juridical persons not organized under the laws of the United States or a constituent state or other political entity thereof. Her claim is, then, based on ownership of shares of stock in Szolnok, a Hungarian corporation, which in turn owned shares of stock in Backa.

The claimant alleges that during his lifetime her deceased husband, Ede Aczel, acquired 18,266 shares of 150,000 shares of outstanding capital stock of Szolnok. Of these 18,266 shares, 6,741 were "deposited" before his death in a "syndicate" or voting trust. Certificates for the remaining 11,525 shares were delivered to claimant by her deceased husband during his life as an advance against her one-half of the "earning community" assets of the marriage and she owned and held these shares at his death. She has filed a photocopy dated August 17, 1931, of a list of the 11,525 Szolnok share certificates by numbers and the document shows there is the further amount of 6,741 which are designated as "deposited." A photocopy of the inventory of securities of the decedent's estate filed by claimant also lists these shares as "on deposit with syndicate."

The claimant further alleges that in February 1939 she made a

division of the 18,266 shares between her children and herself as follows:

| |
|---|
| 5,741 to claimant |
| 5,741 to daughter, Agnes Aczel Olsen |
| 4,741 to daughter, Elizabeth Vasavhelyi |
| 1,043 to son, George Aczel |
| <hr/> |
| 18,266 total |

The amount claimed for this indirect interest is \$6,700.

As to the certificates of these 18,266 shares she alleges that they were kept in Budapest and were either destroyed during the Russian siege of the city in December 1944-January 1945, or were thereafter carried off by the Russian army of occupation. She alleges she has no knowledge of the certificates since that time and has no knowledge whatsoever of their present location, if they do exist, or whether they were destroyed.

As evidence that Szolnok owned shares of stock in Backa, the claimant has filed a Szolnok balance sheet of January 1, 1947, showing a debit of 2,316,467.60 forints for "war losses" and a statement dated October 21, 1947, by Dr. Tibor Nagy of the Szolnok Board of Directors that included within this debit were 12,500 shares of Backa valued at 12,500 forints.

Claimant has filed no corroborating evidence whatsoever as to her ownership of 5,741 Szolnok shares, and her allegations have been based on her revised memory of transactions taking place many years before. Nor has she been able to account for the whereabouts of the share certificates, and we are aware of the fact that these were bearer shares. We conclude that she has not proved the ownership of the 5,741 Szolnok shares and this part of the claim is denied. It is observed in passing that even if we were to find she owned such shares on the date of taking, her indirect proportional interest in Backa would be .383% and not 3.83%, as claimed.

NATIONALIZATION OR OTHER TAKING

As to the taking of the property of Backa, there has been filed with the Commission a decision of September 5, 1946, of the Supreme Court of Vojvodina, sitting as a criminal court. The decision is rendered on an appeal from a decision of the County Court of Sombor of June 29, 1946 (No. K. 68/46) confiscating Backa on the grounds of collaboration pursuant to the Law Regarding Criminal Offenses Against the People and the State, of August 25, 1945 (Official Gazette No. 66 of September 1, 1945). The decision on appeal pronounces confiscation of "all stock

shares" of Backa "regardless of their whereabouts and by whom they are held." By Article 16 of the Law, "From the sentence of the Courts in the first instance an appeal may be taken to a higher court, the sentence of which is final."

We hold, therefore, that the date of taking of claimant's property interests in Backa was September 5, 1946, on which date she was a citizen of the United States.

VALUATION

As corroborating evidence of value, the claimant has filed certain affidavits, the contents of which will be briefly described.

In an affidavit of March 16, 1948, George Aczel, claimant's son and a citizen of Brazil, swears that during the 1930's Backa's annual dividends paid ranged from 50 to 70 dinars per share, that the par value was 400 dinars per share and that the net annual published profits of Backa were in excess of \$200,000, which was equal to nearly \$2 per share at a dinar rate of exchange of 57 dinars per dollar. In his affidavit of January 11, 1951, George Aczel changes his statements, on the basis of the 1930 balance sheet, and swears that dividends declared and paid during at least part of this period were at the rate of 75 dinars per share per annum, and that the book value based on the 1930 balance sheet was 90,643,648.87 dinars (total assets of 119,224,084 less debts to creditors of 28,580,435) which gives an "asset value" per share of 725.15 dinars, which he changes into dollars at the rate of 51 dinars per dollar, rather than the 57 dinars per dollar, as stated in an earlier affidavit. He next analyzes the 1943 balance sheet and fixes the book value at 20,645,487.17 pengos (total assets of 38,270,111 less debts of 17,624,624) with each share having a pengo net asset value of 165.16 pengos. He states that he has been "told" that the exchange rate of the pengo to the dollar was 5.10 pengos to the dollar and on this basis he finds the "dollars asset value per share" in 1943 at approximately \$32.37, which he affirms to be the share value at the time of nationalization.

It may be observed that we do not agree that the book value of the company is what the affiant finds it to be on the basis of either the 1930 or 1943 balance sheets which have been filed by claimant. In the 1930 balance sheet he has deducted only 28,580,435.43 dinars owed to creditors from the assets. However, in our opinion, the item of 14,175,688.63 dinars (Reserve for Depreciation) is a valuation reserve which should be deducted from the fixed assets to arrive at their depreciated value. Accordingly, we conclude that the book value based upon the 1930

balance sheet would be 76,467,960.24 dinars. Similarly, we consider in the 1943 balance sheet that the item of 5,037,777.37 pengos (Value Differential Reserve Fund) is a valuation reserve which should be deducted from the fixed assets to arrive at their depreciated value, and that the net worth based on this balance sheet would be 15,607,710.80 pengos. Finally, we are unaware of the basis on which the affiant was "told" that the pengo-dollar rate of exchange was 5.10 pengos to the dollar in 1943. That was, of course, a year in which the United States was at war with Hungary and the 1948 Statistical Yearbook of the United Nations shows no rate of exchange between the pengo and dollar from the years 1942 through 1945.

Claimant has also filed the affidavit of Baron George Ullman, a former member of the Board of Directors of Backa, who is of the opinion that the net value of Backa during the last years of its existence as an independent enterprise prior to nationalization was approximately twenty million Swiss francs or four to five million United States dollars. In addition, claimant has filed the affidavit of Miksa Oppenheim, a former member of Backa's Board of Directors and Executive Committee. Based on analysis of the 1937 and 1943 balance sheets of Backa and an affidavit of Hubert Algernon Walters regarding fire insurance carried by Backa, the value of the company in 1946 is found by him to be \$5,000,000 or \$40 per share.

This Commission, in addition, has available all balance sheets of Backa from 1934 to 1939, inclusive, and its investigator has inspected the plant, analyzed available records, and submitted a report on the value of the company.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of all property of Backa which was taken by the Government of Yugoslavia was 75,000,000 dinars which would be equivalent to 600 dinars per share. Since claimant owned 9,453 shares in Backa, the value of her interest is 5,671,800 dinars or \$128,904.55 converted at 44 dinars to \$1.

We next must compute the value of claimant's interest in the 2,500 shares of stock in Backa owned by her children, George Aczel and Agnes Olsen. In computing this interest, claimant has treated it as a life estate. However, as we have concluded previously the value of this interest is less than a life estate since it is determinable by remarriage. Claimant, in addition, has computed the value of the interest by calculating present value, alternately in 1931 and 1946, based on an average dividend yield of 8%. This rate was obtained from the figure of 75 dinars per share per annum as stated in the affidavit of George Aczel of January 11,

1951, who swore that such was the dividend declared and paid "during at least part of this period," i.e., the 1930's.

We do not consider that claimant has established a valid basis for computing present value on the basis of an 8% dividend return on the date of taking, since her only evidence on this point is an affidavit referring to a dividend rate for a part of the 1930's.

The Commission does not have actuarial and income data with respect to Hungary or Yugoslavia, and, so far as it has been able to determine, reliable data for Yugoslavia is not available. We shall, therefore, adopt as a basis for computing her interest the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41 and a 3½% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 3 and 4, 1952, for the collection of gift and estate taxes, respectively. (See 17 F.R. 4980, 26 C.F.R. 86.19 (f); 17 F.R. 5016, 26 C.F.R. 81.10 (i).) On the date of taking claimant was sixty years of age and according to that method of valuation the life estate of a person aged sixty years is valued at 39.679% of the entire estate. Since claimant owned less than a life estate, we shall consider her interest to be 30% of the value of the 2,500 shares, each with a value of 600 dinars, or 30% of 1,500,000 dinars. The value of her interest is, therefore, 450,000 dinars, or \$10,227.27.

We therefore find that the total value of claimant's interests in Backa which were taken by the Government of Yugoslavia was \$139,131.82.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Anny Aczel, claimant, in the amount of \$139,131.82 with interest thereon at 6% per annum from September 5, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$16,352.72.

Dated at Washington, D.C.
November 2, 1954.

FINAL DECISION

A Proposed Decision was entered in this claim on November 2, 1954, in which an award was made in favor of Anny Aczel, claimant, in the amount of \$139,131.82 plus interest in the amount of \$16,352.72. Subsequent to the issuance of the Proposed Decision, the claimant filed objections and requested a hearing. In addition, the Government of Yugoslavia filed a brief, as *amicus*

curiae, in which it objected to the amount of the award as being too high.

At the hearing the claimant introduced evidence in support of her objection to the value of Backa, as found in the Proposed Decision. However, we find neither this evidence nor the brief and evidence of the Government of Yugoslavia sufficiently convincing on this point, and the valuation of 75,000,000 dinars for the property of Backa taken by the Government of Yugoslavia is affirmed.

The claimant also introduced evidence with respect to the 130 shares of Backa allegedly purchased by her, the claim for which was denied in the Proposed Decision. We conclude that she has proved ownership of these shares and, accordingly, find that she owned directly a total of 9,583 shares of Backa.

The claimant likewise introduced evidence with respect to the extent of her usufructuary interest in 2,500 shares of Backa owned by her children. This evidence was in the form of testimony by an expert on Hungarian law. On the basis of this evidence, we conclude that, while her interest was less than a life estate, it was 35% of the value of these 2,500 shares, rather than the 30% found in the Proposed Decision.

Finally, claimant submitted evidence with respect to her ownership of 5,741 shares of Szolnok, which in turn owned 12,500 shares of Backa. We conclude that she has proved this indirect interest in Backa to the extent of .383%, but not to the extent of 3.83%, as alleged in the Statement of Claim.

Therefore, the total value of claimant's interests in Backa is computed as follows:

| | Dinars |
|---|-----------|
| 9,583 shares of Backa owned directly ----- | 5,749,800 |
| Indirect proportionate interest through Szolnok ----- | 287,250 |
| Usufructuary interest in 2,500 Backa shares ----- | 525,000 |
| Total ----- | 6,562,050 |

The total dollar value of her interest is, accordingly, \$149,137.50.

Therefore, in full and final disposition of this claim, an award is hereby made to Anny Aczel, claimant, in the amount of \$149,137.50, with interest thereon in the amount of \$18,288.73.

Dated at Washington, D.C.

December 30, 1954.

Less than full ownership.—The notion that one may own an interest in property constituting less than full ownership is not unknown to those schooled in American law. For example, there are dower and curtesy property rights of surviving spouses

(abolished in many jurisdictions in the United States); easement, the right of one person to use the property of another for certain purposes, such as the right of way; usufruct, the right to profit from the property of another; and life estate, an interest in property terminating upon death of the life tenant.

With respect to this category of limited rights, claims under the Yugoslav Claims Agreement of 1948 involved usufructs and life estates. The Commission applied the so-called *situs* rule, that title to real property is determined by the laws of the place where the property is situated, an issue discussed in the *Claim of Manfred Sternberg*, at page 60. In accordance with the laws of Yugoslavia, the Commission held that usufructs and life estates constituted "rights and interests in and with respect to property" within the meaning of Article 1(a) of the Agreement.

In the instant claim, the evidence established that claimant had acquired an interest in her husband's property upon his death. Claimant contended that she owned a life estate, but the laws of Yugoslavia indicated that her rights could be defeated by remarriage. Accordingly, the Commission concluded that the value of a usufructuary interest was less than that of a life estate.

It should be noted that the laws of Yugoslavia were not uniform throughout the country, like the different laws in the several states of the United States. In some areas, as in this case, the laws of Hungary were controlling and in other areas, the Civil Code of Austria or Serbia was applicable. Discussions of those laws appear in the notes to the *Claim of Anthony Kampf, et al.*, at page 68.

Another claim involved a life estate in real property likewise subject to the laws of Hungary which provided for the termination of a life estate upon remarriage. Since it appeared that claimant, the widow, had remarried prior to the date the encumbered property was taken by Yugoslavia, the Commission concluded that claimant was not entitled to an award for this portion of her claim because she owned no interest in the property on the date of loss. (*Claim of Magdalena Maus*, Docket No. Y-787, Dec. No. Y-591.)

Valuation of usufructuary interest, life estate and remainder interest.—The values of life estates and remainder interests were determined by applying the Makehamized mortality tables prescribed by the Treasury Department for the collection of gift and estate taxes. With respect to *Anny Aczel*, claimant in the instant case, these mortality tables were applied but the result was reduced by 4.679%.

The value of a limited usufructuary interest, in another claim, was determined on the basis of Yugoslav law. Claimant's property was encumbered by a usufruct, having four years to run at the time the property was taken. In order to compute the value of this encumbrance, the Commission applied Article 27(2) of the Yugoslav law of October 26, 1945, on direct taxation (Official Gazette No. 854, November 20, 1945) which provides:

When usufructuary rights are restricted to a certain period of time, the basis of taxation shall amount for each year of usufruction to 5% of the value of the rela-

tive property, with the proviso however that the basis of taxation may not exceed 100% of the value of the property, regardless of the foreseen period of usufruction.

Accordingly, the value of claimant's property was reduced by 20%. (*Claim of Theresa Koenig*, Docket No. Y-1153, Dec. No. Y-1266.)

A claimant owned a 6 128 interest in property, encumbered by a life estate. No evidence was available as to whether the life tenant was dead or alive on the date of taking. In view of the inconsequential amount involved, the encumbrance was disregarded by the Commission under the rule *de minimis non curat lex*. (*Claim of Stefan Anton Johsz, et al.*, Docket No. Y-1587, Dec. No. Y-1420.)

Family communities (zadruga).—Certain property involved in a claim had formerly been the community property (*zadruga*) of a family, including claimant, his father, and his mother. Family communities were governed by legislation for the first time on May 5, 1889 by a law enacted by the Government of the Province of Croatia-Slavonia, a semi-independent unit of the Austro-Hungarian Empire, and amended on April 10, 1902. Its pertinent provisions were as follows:

1. Members of a family community, which is an independent legal entity, are all males and females, belonging to the family by blood or by marriage relations. However, boys and non-married girls under 18 years and married women as long as their husbands live, are not members and have no property rights in the community. Girls who marry out of the community lose their rights to the family community property.

2. A family community is an independent economic unit, not subject to any partition in the case of the death of a member. The property of such a community is always deemed to be the common property of all the members who are alive.

3. If a married male member dies, the surviving widow becomes a member. Such a widow has equal rights as the other members of the family community, but neither she nor her children inherit anything in the family community.

4. A family community can be dissolved by majority vote of all of its members. It can also be dissolved if the family community is composed of only one surviving member. In the latter case the last surviving member becomes the sole owner of the property.

5. If, as in the instant case, the family community is composed of a father, his wife and a son, and the father dies, both the surviving widow and the son can ask for the dissolution of the community. It will be accorded and the property relations are to be settled under the general laws of inheritance (i.e. under the Civil Code).

However, the general laws of inheritance applicable in the area where the community property was located provided that a surviving widow acquires a life estate in only one-fourth of

the decedent's estate if he dies intestate. Accordingly, since claimant's father died intestate before the community property was taken, his award was determined by deducting from the value of the property on the date of taking an appropriate amount for his mother's life estate in one-fourth of the property. While the record showed that his mother died about three years after the taking, this fact was deemed irrelevant. The Commission's determinations were based on the property rights that existed on the date of taking. (*Claim of Daniel Lanin*, Docket No. Y-1278, Dec. No. Y-1331.)

Rights of pledgees.—Serious questions arose with respect to pledged personal property that was taken by Yugoslavia. Generally, a pledgee has possession of property as security for a debt owed him, while legal title is vested in the debtor or pledgor; and a pledgee may sell the property upon default of the debtor. Whether a claim was filed by the pledgee or the pledgor, it was necessary to determine the property rights and interests of the parties pursuant to the Yugoslav Claims Agreement of 1948.

The claim of a pledgee involved shares of stock of a Yugoslav corporation which was confiscated by Yugoslavia in 1945, after World War II. The shares were held for claimant by a Swiss bank as security for a debt owed claimant by the Yugoslav corporation. It appeared initially pursuant to a "novation agreement" in 1939 that claimant had renounced all claims against the corporation and had released the pledged shares. Under an agreement between Yugoslavia and Switzerland, Yugoslavia paid for the nationalization of the Yugoslav corporation. Since it appeared that payment had been made for all of the shares of the Yugoslav corporation, the claim was denied by the Commission's Proposed Decision.

Evidence submitted in the course of an oral hearing established that the Swiss bank had acted as depository and escrow agent of the claimant, and that the novation agreement, executed in Switzerland, "was so clearly the result of fraud and duress and was otherwise so defective, whether by reference to Swiss law or to United States law, that it should be regarded as a nullity." The Commission held that the security interest of claimant constituted a right and interest in and with respect to property within the meaning of the Yugoslav Claims Agreement of 1948. The Commission added that it had adopted a similar principle in determinations on claims based on real property mortgages. A discussion of mortgages appears in the *Claim of Manfred Sternberg*, at page 62. On the basis of testimony from the Swiss bank's representative, the Commission found that the bank's claim, which was settled under the Swiss-Yugoslav Claims Agreement, did not include claimant's interests. Accordingly, claimant was granted an award, measured by the extent of indebtedness due on the date the Yugoslav corporation was taken. (*Claim of Marietta J. Poras*, Docket No. Y-1259, Dec. No. Y-1543.)

In another claim, it appeared that claimant had acquired a pledge of stock in 1937 as security for a debt. However, since he was unable to establish that he retained any rights as pledgee

on the date the corporation was confiscated by Yugoslavia, his claim was denied. (*Claim of Reginald Parker*, Docket No. Y-1018, Dec. No. Y-1201.)

In the Matter of the Claim of

Docket No. Y-402
Decision No. Y-740

MILE SMILJANIC, ET AL.

Against the Government of Yugoslavia

Sale by German occupants of Yugoslavia during World War II of property acquired under discriminatory laws did not vest good title in purchaser under laws of Yugoslavia.

PROPOSED DECISION

This is a claim for \$17,120 which is asserted to be the value of a three-story brick building and land recorded in the Belgrade Land Register in Docket No. 4146 as Lot No. 2459/120, House No. 4 with yard, at the corner of Djerdap and Mike Mitrovich Streets, Belgrade, Yugoslavia, said to have been taken by the Yugoslav Peoples Court II, Belgrade, in September 1945. The claimants, husband and wife, each claim a one-half ($\frac{1}{2}$) interest in the property.

Claimant Mile Smiljanic has been a national of the United States since December 3, 1928, the date on which he was naturalized by the United States District Court at Detroit, Michigan. Claimant Ana Smiljanic was naturalized on July 12, 1949, by the same court.

Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949 it is required, as one of the conditions precedent to the maintenance of a claim thereunder, that the claimant shall have been a national of the United States at the time of Yugoslav nationalization or other taking of the property. Since Ana Smiljanic did not become a national of the United States until 1949, long after the alleged taking, she has no legal standing upon which to prosecute her portion of the claim. Her claim, therefore, is denied.

The evidence of record shows that the above-described property was jointly owned by Frank Auslaender and Anna Auslaender, husband and wife, pursuant to a sales contract dated March 3, 1941. The property was later confiscated by Axis occupation authorities, pursuant to racial discrimination measures.

and the right of resale was vested by those authorities in one Nikolaus Virt as a "commissioned administrator." Under date of April 22, 1942, in a sales contract, Nikolaus Virt, "Pursuant to the authorization contained in the Decree of July 22, 1941 amending the Decree regarding Jews and Gypsies of May 30, 1941," purported to sell the property to claimants. The decree of the Circuit Court for the City of Belgrade II directing entry of ownership in claimants also refers to the seller, Nikolaus Virt, as the "Commissary, Administrator of the real-estate property of Frank Anslender and Ana, Hebrews."

On November 12, 1945, pursuant to a decree of the People's County Court for the IVth Precinct in Belgrade, following the reestablishment of the Yugoslav Government, the property was restituted to the Auslaenders.

By correspondence under date of May 25, 1953, in reference to this claim, the Government of Yugoslavia advises that the property was purchased by claimants during the German occupation from the Commissary for confiscated Jewish property; that the transaction was in aid of the occupier's plundering purposes in seizing property of persons of Jewish origin; that, after liberation, the property was restituted to the original owner, without compensation to the holder; and that, under these circumstances, the property cannot be viewed as having been "taken" by the Government of Yugoslavia, with the result that the claim is unfounded.

In recognition of the illegal measures in force during the German occupation in the acquisition of properties, the United Nations issued a declaration on January 5, 1943, to which both the United States and Yugoslavia were parties, in which they reserved the right "to declare invalid any transfers of, or dealings with, property, rights and interests" in territories under enemy occupation (*Declaration Regarding Forced Transfers of Property in Enemy-Controlled Territory*). That Declaration also contained "a formal warning to all concerned, and in particular to persons in neutral countries, that they intend to do their utmost to defeat the methods of dispossession practiced by the governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled."

Even before that declaration, several governments-in-exile had issued decrees to the effect that measures as to property adopted by the occupying power were to be considered null and void. Such decrees were issued by the Belgian Government on January 10, 1941, the Polish Government on November 30, 1939, and by the Yugoslav Government under date of May 28, 1942. In World War I, changes of title to ownership effected under political pressure or by means of military contingencies in occupied

France and Belgium were not recognized by the French and Belgian authorities after the occupation, and special laws were passed invalidating contracts entered into during the occupation period. (Lemkin, *Axis Rule in Occupied Europe*, pp. 40–41.)

To the same effect as the United Nations Declaration is Resolution 7 of the 1943 London International Law Conference:

A person who acquires, even in good faith, any property, rights or interests which are or have been situated in occupied territory or are the property of nationals of that country will, if his acquisition of them is derived directly or indirectly from acts of the occupant or his associates or agents, not acquire an internationally valid title thereto as against the true owner unless such title is valid by the law of the occupied country as applied by the reconstituted authorities after the liberation of the country.

As hereinabove noted, the Government of Yugoslavia has declared invalid the title acquired by claimants from the occupant.

These declarations are in accord with the concepts expressed through the years by countries, courts and various tribunals on the illegal acts of occupant-plunderers.

The view of the United States was clearly and pointedly stated in a situation which arose during the Civil War. In 1862, certain shares of stock in a South Carolina corporation, held by loyal citizens of the United States, were sequestered and sold under a statute of the Confederate congress as the property of "alien enemies" and new certificates of stock were issued to the purchasers. In 1866, following United States occupation of South Carolina, restoration was made to the original holders. In the litigation which arose, it was held, in *Dewing v. Perdicaries*, 96 U.S. 193, 195 (1877), (1) that the new certificates issued under the Confederacy gave no title either to the purchasers or their assignees and should be cancelled, and (2) that the purchasers and their assignees could claim no indemnity from the company. "Nothing is better settled," said the court, "in the jurisprudence of this court than that all acts done in aid of the rebellion were illegal and of no validity. The principle has become axiomatic. It would be a mere waste of time to linger upon the point for the purpose of discussing it The transactions here in question were clearly within the category thus denounced. The order of sequestration, the sale, the transfer, and the new certificates were all utterly void. They gave no rights to the purchasers, and took none from the loyal owners. In view of the law, the rightful relations of both to the property were just the same afterwards that they had been before. The purchasers had not

then, and they have not now, a scintilla of title to the stock. The transferees can be no better off than their vendors."

Chief Justice Marshall, speaking for the Supreme Court in *United States v. Percheman*, 7 Pet. 51, 86 (1833) said, in reference to the treaty of 1819 with Spain ceding the Floridas:

. . . it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property remain undisturbed.

And, as stated by Mr. Bayard, Secretary of State, on March 20, 1886, "The Government of the United States, therefore, holds that titles derived from a duly constituted prior foreign government to which it has succeeded are 'consecrated by the law of nations' even as against titles claimed under its own subsequent laws Title to land and landed improvements, is, by the law of nations, a continuous right, not subject to be divested by any retroactive legislation of new governments taking the place of that by which such title was lawfully granted." (I Moore, *International Law Digest*, 422 (1906).)

Deprivation of private property rights because of race and without provision for compensation by a government which was created and maintained by hostile foreign military forces constitutes a sufficiently clear offense to international law, justice and morality as to need no elaborate exposition. In the matter at hand, the several legends and other references in the documents incident to the sale to claimants clearly indicated, and gave ample warning of, the circumstances under which the property was acquired and sold. It would appear that claimants were fully aware of these circumstances, but seemingly elected to take the risks involved. Apart from the question of good or bad faith, which is given no weight in our decision, it is quite clear that claimants did not acquire valid title under the laws of Yugoslavia or suffer a deprivation of property by Yugoslavia which would constitute a basis for compensation under the Yugoslav Claims Agreement or the principles of international law.

In view of the foregoing, this claim must be, and hereby is, denied.

Dated at Washington, D.C.

April 9, 1954.

Forced sales.—Serious questions of ownership arose as a result of the confiscation and forced sale of property pursuant to national, religious, racial and political persecution measures enforced during World War II while Germany occupied Yugoslavia. This problem was complicated by the fact that persecutees had lost title to their properties by the actions of the Germans who usurped authority in all areas under their control.

The Commission had concluded, as a general rule, that proof of record title was *prima facie* evidence of ownership. As will be noted in the *Claim of Manfred Sternberg*, appearing at page 60, the Commission adhered to the *lex loci rei sitae* rule; namely, that ownership of property is determined by the laws of the place where the property is situated. However, there were a number of exceptions recognized by the Commission pursuant to the provisions of Section 4(a) of the 1949 Act, which directed that claims be determined in accordance with "applicable principles of international law, justice, and equity." For example, beneficial ownership, as opposed to nominal ownership, was deemed controlling. This subject and other questions of ownership are dealt with in the *Claim of Siegfried Arndt*, appearing at page 37. Certainly, justice demanded that unlawful deprivation of property be condemned, and equity warranted restoration of title.

As the decision on the instant claim states, the United Nations had issued a joint declaration on January 5, 1943, indicating their intention to "defeat the methods of dispossession practiced by the governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled." After the war Yugoslavia nullified all such forced transfers and restored the properties to their lawful owners. Claimants herein had purported to purchase certain real property from the Axis occupation authorities who had confiscated the property from Jewish persons. Late in 1945, Yugoslavia returned the property to the original owners. The Commission held that claimants "did not acquire valid title under the laws of Yugoslavia" and denied the claim.

Claimant in another case owned interests in two concerns, one in Zagreb, Yugoslavia, and the other in Vienna, Austria. After the occupation of Austria, the concern in Vienna was seized by German authorities as Jewish-owned, and claimant fled Vienna. Fearing similar losses in Zagreb, claimant transferred her interest in the Zagreb concern to her mother, who at that time was married to an Aryan. It was understood that claimant's ownership would be restored as soon as practicable. The Commission held that claimant had retained beneficial ownership of her interest in the Zagreb concern, and found no merit in the contention by Yugoslavia that claimant's mother was the owner. (*Claim of Gertrud Kolisch*, Docket No. Y-1751, Dec. No. Y-1447.)

Tense conditions prevailing in Eastern and Central Europe and apprehension over the untoward political situation existing in Yugoslavia prior to World War II often prompted the hiding or sale of Jewish assets. These circumstances alone were deemed insufficient to establish a sale under duress or retention of beneficial ownership.

In 1938 shares of stock of a Yugoslav corporation were pledged by a Jewish person as security for a loan. The value of the stock was substantially greater than the amount of the loan. Claimant, the creditor, asserted that in 1941 ownership of the stock was transferred to him in satisfaction of the debt. However, it appeared that as a precautionary measure, the debtor arranged for the deposit of the certificates with a Yugoslav bank in favor of his wife who was not Jewish. Claimant had reported the transaction as a loan in 1943 when he executed and filed form TFR-500 with the Treasury Department, which required Americans to report ownership of property abroad. There was neither an actual nor symbolic delivery of the stock to claimant; nor did the facts otherwise support a favorable finding. An affidavit from the debtor clearly repudiated claimant's contentions. The Commission stated as the basis for denying the claim that "A claim of beneficial ownership of personal property, the legal title to which is in some other person, should be supported by proof as clear, consistent and convincing as might reasonably be expected under all the circumstances. We do not consider that claimant has met that test here." (*Claim of Richard D. Frankenbush*, Docket No. Y-1190, Dec. No. Y-1218.) The related question concerning the status of a pledgee is discussed in the *Claim of Marietta J. Poras*, at page 83.

Sale in course of resettlement.—Following the invasion of Yugoslavia by German and Italian forces, the province of Slovenia was divided between them by the annexation of the larger northern portion by Germany and the smaller southern portion by Italy. On August 31, 1941, they entered into an agreement under which Germans, then residing in the newly created Italian province of Lubiana, were permitted to resettle in the northern portion of Slovenia. A corporation under Italian jurisdiction was organized to facilitate all transactions connected with resettlement. In practice, the Germans in Lubiana conveyed their real property to the corporation and resettled in the northern portion of Slovenia. No payment was made on account of these transfers of property; nor were they required to pay for the new property in Slovenia. The consideration for the new property was to be paid for by the corporation to Germany. By Decree of February 3, 1945 (Official Gazette No. 4, February 13, 1945) Yugoslavia declared null and void all statutory provisions and the like enacted by enemy authorities during their occupation of Slovenia. This Decree, in effect, voided all transactions of the Italian corporation, including any sales to third parties of property acquired from Germans in Lubiana.

In one such claim, claimant's brother transferred his own and claimant's property to the Italian corporation. The Decree of February 3, 1945 voided this purported sale, and there was no evidence that claimant's brother had authority to act on behalf of claimant. The Commission noted that claimant had not transferred her property to the Italian corporation or otherwise divested herself of ownership. It was, therefore, concluded that claimant was the owner of the property when it was taken by Yugoslavia pursuant to the Enemy Property Law of November 21, 1944. (*Claim of Rose Stocker*, Docket No. Y-821, Dec. No. Y-1212.)

JOHN A. ZVETINA, RECEIVER**Against the Government of Yugoslavia**

Concession to mine marble constituted "rights and interests in and with respect to property" under Article 1(a) of Yugoslav Claims Agreement of 1948 and Section 4(a), Title I of the 1949 Act.

Value of quarry reserves pursuant to mining concession determined on basis of unexpired term of concession on date of taking by Yugoslavia. Claim denied under Section 4(a) for failure to establish value of corporate property taken by Yugoslavia, or that the value of the corporation's assets exceeded its liabilities. Outstanding mortgages, normally deducted in determining value of encumbered property under Section 4(a), disregarded because of pending suit by mortgagees against mortgageor.

PROPOSED DECISION

This is a claim for \$853,222.79 by John A. Zvetina, as Receiver of the First American Yugoslav Export-Import Corporation, an Illinois corporation, and is for the nationalization by the Government of Yugoslavia of a mining concession called "Vencac-Crasac," along with equipment, machinery, improvements, buildings and all other property appurtenant thereto, located in the District of Jasenica, in Arandjelovac, and owned by the First American Yugoslav Export-Import Corporation, and for indemnity and damages sustained by the corporation by reason of an illegal action of a District Court in Yugoslavia in appointing and giving possession of said property to a receiver from August 1, 1931 to July 15, 1940.

Evidence before the Commission establishes that the First American Yugoslav Export-Import Corporation was incorporated on or about September 19, 1918 pursuant to the laws of the State of Illinois; that the original capital stock of \$250,000 was fully subscribed, and that a decree dissolving the corporation was entered by the Superior Court of Cook County in Chancery, No. 25818, on October 4, 1926. It is also established by evidence of record that John A. Zvetina was appointed as Receiver of the corporation by the United States District Court for the Northern District of Illinois (Civil Action No. 54 C 1588) on November 4, 1954.

It is also established by evidence of record that at least 20% of the outstanding securities of the First American Yugoslav Export-Import Corporation are owned by individual nationals of the United States, and that this claim comes within the terms of

Article 2(b) of the Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia.

According to documentary evidence filed by the claimant, the Government of Yugoslavia, and admissions of that Government, the First American Yugoslav Export-Import Corporation was the owner of certain real and personal property in Yugoslavia, including a concession to extract marble from a quarry known as "Vencac," which was nationalized by the Government of Yugoslavia on December 5, 1946, pursuant to the Law Regarding the Nationalization of Private Economic Enterprises (Official Gazette No. 98 of December 6, 1946).

Claimant asks \$540,272.74 for all of the property, exclusive of the quarrying concession. As evidence of value, claimant filed an inventory and report made on January 22, 1925 by the Trade Commission of the Ministry of Forests and Mines, which was certified by the Ministry for the County of Jasenica, Arandjelovac, under No. 18,791, on October 8, 1926, to the effect that the value of the property, exclusive of the concession, was worth 27,013,637 dinars. Claimant also filed a photostatic copy of a decision dated January 13, 1931, No. Pl.1708/38, of the Court of Appeals of the Third Section in Belgrade, to the effect that the property owned by "Vencac," pursuant to a court inventory of August 1, 1931, No. 27724, was worth 1,247,460 dinars.

Other evidence before the Commission shows that the corporation obtained a one-half interest in the "Vencac" mining property, including the concession, from Ivan Milosevic in consideration for the cancellation of a \$46,000 note and the payment to him of 2,000,000 dinars.

The Government of Yugoslavia has filed an appraisal dated November 14, 1923, R. No. 9591, in which the real property, equipment, machinery, tools, furniture, vehicles and miscellaneous materials, is valued at that time at 5,871,000 dinars. That Government has advised the Commission that the value of the marble quarry, vacant lot, business (administration) building, ground-floor residential building, a one-story residential building, joiner's workshop, canteen and residential building, stonecutting shop, machine workshop, one-story residential building with shed and other constructions had a value of 282,948 dinars, on the basis of 1938 values. That Government also advised that all of the machines found on the premises were "worn out" and that parts of the machines were carried away during the occupation and other machines were taken by the occupator. Upon the basis of that data the Government of Yugoslavia appraised the remaining personal property, in accordance with 1938 values, at 75,400 dinars.

It is alleged that the personalty was depreciated 80% because of the limited life of the mining concession.

An investigator for this Commission inspected the property and made an independent appraisal thereof. On the basis of that appraisal the Commission finds the following values in dinars:

| Description: | Valuation |
|--|-----------|
| 5.7440 hectares of land ----- | 69,600 |
| Administrative building ----- | 121,250 |
| Residential building ----- | 31,580 |
| Residential building ----- | 99,840 |
| Carpenter shop ----- | 108,860 |
| Canteen and residential building ----- | 182,860 |
| Shop ----- | 144,400 |
| Machine shop ----- | 200,340 |
| Residence ----- | 314,560 |
| Other improvements ----- | 110,000 |
| Machinery ----- | 282,750 |
| Total ----- | 1,666,040 |

The above values take into account damages caused the property by military activity. The Yugoslav Government and the Commission's investigators have reported that some of the machinery was taken away by enemy or occupation forces and that other property was destroyed as a result of military activities before the property was taken by Yugoslav authorities. The Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia settled claims for the "nationalization and other taking by Yugoslavia of property" (Article 1). The Commission has consistently held that loss or destruction of property by forces or causes such as those mentioned above is not a "nationalization" or "taking" of property by the Government of Yugoslavia and that losses of that kind were not settled by the Agreement of July 19, 1948 and are not within the jurisdiction of this Commission.

Upon consideration of all the evidence before it, the Commission is of the opinion that the gross value of all of the property, exclusive of the concession, taken by the Government of Yugoslavia, was 1,666,040 dinars, based upon 1938 values.

The Government of Yugoslavia has filed a certified extract from the Land Registry Office of the Cadastral District of Banja (Docket No. 390) for the property involved. According to that extract the following liens are recorded against it:

1. Received: August 30, 1938, Dn. No. 1.692 38. Upon the Report and on basis of the Certificate of the District Court in Arandjelovac, No. 1.510 38 and 926 29, and Art. 46, mortgage right on the land under A List, for unpaid taxes amounting to 235,966 dinars, priority line as of December 26,

1929, entered in favor of State Land Fund of the Kingdom of Yugoslavia.

2. Received: August 30, 1938, Dn. No. 2004/38. Upon the Report and on basis of the Certificate of the District Court in Arandjelovac, No. R. 1525/38, I. No. 745/30, and Art. 46 of the Law (?), mortgage right on the land under A List, for the debt amounting to 100,000 dinars, at 6% interest, priority line as of July 9, 1930, entered in favor of Petrovic V. Veljko, a lawyer of Belgrade.

3. Received: August 27, 1938, Dn. No. 1.647/38. Upon the Report and on basis of the Certificate of the District Court in Arandjelovac, No. R-2.269/33, and Art. 46 of the Law on Reg. Books, mortgage right on the land under A List, for the debt amounting to 2,500,000 dinars, priority line as of May 28, 1931, entered in favor of Michel Ducich, an industrialist of Gary, Indiana, then:

4. Mortgage right on the above cited claim, for the sum of 1,600,000 dinars, at 7½% interest, from the expired time limit until paid, priority line as of July 7, 1932, entered in favor of National Bank of the Kingdom of Yugoslavia, Belgrade.

5. Received: August 30, 1938, Dn. No. 1691/38. Upon the Report and on basis of the Certificate of the District Court in Arandjelovac, No. R. 1510/38, I. No. 274/33, and Art. 46 of the Law on Reg. Books, mortgage right on the land under A, for unpaid direct taxes amounting to 260,994 dinars, priority line as of November 10, 1933, entered in favor of State Land Fund of the Kingdom of Yugoslavia.

In addition to the above, the Government of Yugoslavia has advised that the Mining Registry Books show Item No. 3 above and the following encumbrances on the concession:

1. Note for guaranteeing promissory note debt amounting to 300,000 dinars in favor of Ermenij Dorio;

2. Note for guaranteeing of debt amounting to 84,787 dinars in favor of Obrad Blagojevic;

3. Mortgage right for guaranteeing of debt amounting to 73,162.68 dinars in favor of Jovan Miljus, a merchant of Pittsburgh;

4. Mortgage right for guaranteeing of debt amounting to 1,350,000 dinars in favor of Amerikansko-Srpska Banka, d.d. (American-Serb Bank, Inc.), Sarajevo.

Claimant has filed no evidence with respect to the above obligations.

On the basis of the foregoing, the Commission finds that the

liabilities of the First American Yugoslav Export-Import Corporation exceed the value of its physical assets.

Claimant also asks compensation for the value of the mining concession. No particular value is given to it but it is alleged that,

Marble industry "Vencac" was a concession The concession was originally issued . . . on August 8, 1912, and had a term of 50 years. It would expire . . . on August 7, 1962.

As evidence of value of the concession, claimant has filed data with respect to operations from 1923 to 1931. Claimant operated the quarry for approximately ten months during 1931. Claimant did not operate the quarry thereafter. It appears that since 1931 claimant has been engaged in numerous law suits, some of which have not yet been resolved. This Commission is not in a position to determine the merits of the suits. Also, in the absence of further evidence regarding the value of the concession the Commission is not in a position to find that it had a value in excess of the liens against it.

Claimant also asks compensation for the value of the original concession for an additional period of fifty years on the ground that,

The term of any concession, as to which the owner entered into possession and operated for a set period of years, was automatically and by law extended for fifty years beyond the initial expiration date.

It is our understanding that mining concessions are regulated by the Mining Industry Law of the Kingdom of Serbia, promulgated April 15, 1866 as amended January 27, 1900. According to that law, the holder of a concession receives the right to mine for a fixed period and a renewal is not automatic and can be obtained only with the approval of the Government.

This Commission has consistently held that the burden of establishing a claim rests with each claimant. It is our view that claimant has not met that burden with respect to the value, if any, of the concession. Accordingly, these items of the claim must be denied.

Claimant also asks compensation for claims of "Vencac" for loss of possession of the property from August 1, 1931 to July 15, 1940, on account of the illegal action of the District Court in appointing and giving possession of the property to a receiver, which action and decision were set aside and held by the Appellate Court to have been illegal. Claimant states that this item of the claim is based upon the following suits now pending in the District Court of Belgrade, Yugoslavia.

1. An action on behalf of First American Yugoslav

Export-Import Corporation in the District Court of Belgrade, on September 25, 1939, Po-644/39 for indemnity (damages) for the amount of 14,543,077.03 dinars (\$290,861.54), which suit is still pending and undetermined;

2. An action brought on behalf of First American Yugoslav Export-Import Corporation in the District Court of Belgrade, on June 3, 1940, Po-424/40, for indemnity (damages) in the amount of 981,978.75 dinars (\$19,639.57), which suit is still pending and undetermined; and

3. An action brought on behalf of First American Yugoslav Export-Import Corporation in the District Court of Belgrade, on March 1, 1941, Po-193/41 for indemnity (damages) for the amount of 122,749.34 dinars (\$2,454.94), which suit is still pending and undetermined.

It would appear from the evidence filed that claimant has a cause of action for damages. Whether that cause of action will result in a judgment in his favor is conjectural and not susceptible of determination by this Commission. However, assuming that a judgment would be rendered in claimant's favor, his claim would then be a debt claim. This Commission has consistently held that debts of this nature were not included in the Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia. In this regard, it may be noted that the Senate Report (810, 81st Cong., 1st Sess.), which reflects the views of the officials of the United States Government who negotiated the Agreement with Yugoslavia contains the following statement with respect to debt claims:

... The claims settled do not include creditor interests. They are confined to ownership interest in property, either legal or beneficial, direct or indirect. This is consistent with traditional United States policy in connection with espousals.

On the other hand, the claim for the allegedly illegal deprivation of possession of the quarry is likewise not within the jurisdiction of this Commission because the Agreement of July 19, 1948, *supra*, settled claims "of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect to property, which occurred between September 1, 1939 and the date hereof (July 19, 1948)."

For the foregoing reasons, this claim is denied in its entirety.

Dated at Washington, D.C.

November 26, 1954.

FINAL DECISION

On November 26, 1954, the Commission issued its Proposed Decision denying the claim herein in its entirety on the ground that there appeared to be liens against the property in excess of the value of the physical assets of the "Vencac" quarry, and that there was insufficient evidence to determine the value of the mining concession.

Claimant has filed objections, with a brief in support thereof, and a hearing has been held at which additional documentary evidence was filed and argument had as to such objections. Each of the claimant's objections will be considered *seriatim*.

Objection to the deduction of encumbrances existing against the property at the time of taking is in conflict with a principle consistently adhered to by the Commission, in its determination of all claims before it. The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act to apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law, justice and equity, in that order. The Agreement contains no specific provision regarding mortgages. We have found no applicable decisions of arbitral tribunals, international or domestic, having responsibility for the determination of claims which were satisfied by the payment of a lump sum. (Because of the comparatively recent acceptance of lump sums in settlement of large blocks of international claims, it is doubted that there are reported decisions directly in point.)

It is our view that justice and equity to all claimants require a deduction for mortgages under the circumstances involved in the claims before us, whether the property was taken before or after the above-mentioned Yugoslav debt settlement law became effective. The lump sum of \$17,000,000 has been provided for the satisfaction of all claims. As the claims filed aggregate many times that amount, the fund may be insufficient to pay all claims allowed in full. In these circumstances, we believe we are obligated to limit our awards to actual proven losses and not to make awards for contingent losses which may never materialize. We also believe that when many claimants have to share in a fund which may prove inadequate, one claimant should not receive a windfall or be enriched at the expense of other claimants. That would be the case if a claimant who was awarded the full value of his property made no payment on the mortgage, or satisfied the mortgage debt by payment of only 10% of the mortgage pursuant to the Yugoslavia debt settlement law. Accordingly, we hold that, in the absence of evidence that a mortgage of record

has been satisfied, a deduction for the mortgage must be made in order to reflect the actual amount of claimant's loss.

However, in this claim, there has been submitted documentary evidence as to the satisfaction or discharge of certain of the encumbrances of record against the property. Upon examination thereof, it appears that the second of two tax liens recorded is actually a cumulative figure, so that only the amount of 260,994 dinars was due at the time of taking rather than two separate tax items. Claimant, by documentary evidence, has also made a showing that the mortgages listed as item 2 on page 5, and items 2 and 4 on page 6, of the Proposed Decision were paid and discharged prior to the date of taking. It has been established that the mortgage right of 1,600,000 dinars in favor of the National Bank of the Kingdom of Yugoslavia was to secure a line of credit of which the amount of 1,000,000 dinars was outstanding and owed at the time of taking. With respect to item 1 on page 6 of the Proposed Decision, claimant has conceded that it has no evidence as to payment and the debt balance of 300,000 dinars in favor of Ermenji Dorio must be considered as outstanding.

There remains for consideration, with reference to the encumbrances, the mortgages of 2,500,000 dinars and 73,163 dinars in favor of Michel Ducich and Jovan Milus. Both of these individuals have been identified as stockholders in the First American Yugoslav Export-Import Corporation. Having both an ownership and a debtor interest in the corporation, they are estopped, under the Agreement, from asserting both. The filing of this claim by the Receiver for the corporation may be considered, in effect, as an election of these shareholders to seek compensation for the ownership interest under the Agreement. To deduct these two shareholder mortgages from the value of the corporation assets would only reduce the Receiver's fund (assuming an award were made) to which the two creditors still may look for payment of the mortgage debts. Indeed, evidence has been filed that Michel Ducich has already instituted an action on the debt against the corporation. To deduct these encumbrances here would manifestly be inequitable.

The Commission concludes from the entire record that the sum of 1,560,994 dinars must be considered as outstanding encumbrances against the property at the time of taking.

Claimant's second objection relates to the failure of the Proposed Decision to ascribe a value to the mining concession—such conclusion being due to lack of evidence. The claimant has filed production and income statistics for the years 1926–1930, and the affidavits of the former quarry manager and a Yugoslav

mining engineer as to the annual rate of production, the amount of marble unquarried, past profits and estimated value of the concession. The former manager gave 500,000 dinars as his estimate of the annual net income for the remaining life of the concession. The local mining expert's opinion was that there would be a total net profit of 2,500,000 dinars annually. The estimate of the former manager appears to be much more realistic as to the operating potential of the quarry since the production figures upon which his calculations were based are more nearly in agreement with the actual figures filed with the Yugoslav Mining Department of the Ministry of Forests and Mines for the period prior to the "illegal" bankruptcy.

Claimant contends that the concession was owned in perpetuity and should not be limited to the sixteen-year period from the date of taking to the end of the original fifty-year grant. The Mining Law for the Kingdom of Serbia of April 15, 1866, as amended July 21, 1877, February 6, 1896 and January 27, 1900, provided:

Whoever has a license on a certain mine for 15 years, properly extracts ores and minerals, and exactly performs his obligations under the present law, upon the report of the Ministry of the National Economy, shall acquire the ownership of the mine by decree of the Cabinet, provided he filed a petition. (Article 47)

The obligations referred to included regular, continuous working of the mine, assuring the general safety and safety of the workmen employed, and the filing of an annual report on the work done and the plan of work for the following year (Articles 32, 76 and 81). Another article of the law provides for renewal of the concession upon application, in the event ownership has not been obtained.

Claimant contends the law made it mandatory upon the Government to grant ownership to one who operated the quarry for fifteen years and, accordingly, the claimant should be considered as outright owner. Whether the law is mandatory or discretionary is of secondary significance in this instance because there is no evidence in the record as to the satisfaction of the conditions precedent to an application for ownership rights or renewal of the concession. The evidence of record clearly shows that the quarry was not worked regularly since work was stopped in 1941. As to the other conditions, the record is silent. In any event, no certificate from the Yugoslav authorities or other evidence has been filed to indicate that ownership rights had been granted, nor even that application was made. Likewise, whether or not the concession would have been renewed, is mere conjecture. Accordingly, the value of the quarry reserves must be calculated upon

the basis of a concession with sixteen years yet to run at the time of the taking.

Claimant's contention that compensation should be awarded for the period of "illegal" bankruptcy following September 1, 1939, is rejected since such deprivation of possession is not within the contemplation of the term "nationalization or other taking" as found in the Agreement of July 19, 1948. With respect to the claim for compensation for damages arising out of the "illegal" bankruptcy from 1931 to 1939, it would appear from the evidence filed that claimant has prevailed in his court action in Yugoslavia, but that his claim for damages is an unliquidated one. With no evidence as to the value, if any, of such claim, it is impossible to include for consideration that item as an asset.

On the basis of the entire record, the Commission concludes that the fair and reasonable value of the property, including the present worth of the sixteen-year concession, and minus the outstanding encumbrances, taken by the Government of Yugoslavia, was 3,642,146 dinars as of the year 1938. That amount, converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon 1938 valuations, equals \$82,776.05.

Accordingly, the Commission hereby adopts the Proposed Decision as its Final Decision in the claim herein, with the following exception:

Instead of a denial of the claim in its entirety, the Commission finds the value of the property taken to be \$82,776.05 and, accordingly:

In full and final disposition of the claim, an award is hereby made to John A. Zvetina, Receiver for the First American Yugoslav Export-Import Corporation, claimant, in the amount of \$82,776.05, with interest thereon at 6% per annum from December 5, 1946, the date of nationalization, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$8,504.41.

Dated at Washington, D.C.
December 30, 1954.

Mining concession—contract rights.—Claims based upon rights to explore minerals presented serious questions because the land to be explored was owned by others. These rights arose out of contracts granting concessions for fixed periods of time. The principal question was whether a contract right constituted

"rights and interests in and with respect to property" within the meaning of the Yugoslav Claims Agreement of 1948. In the instant case, claimant, a domestic corporation in receivership, sought compensation, among other things, for the value of a fifty-year concession to extract marble from a quarry in Serbia. The Commission concluded that claimant's rights pursuant to the concession were embraced by the terms of the Agreement. However, with respect to the extent of that interest, claimant urged that the concession was owned in perpetuity, relying upon the laws of Serbia. A study of the pertinent statutes of Serbia indicated that a mining concession for a period of fifteen years or more may ripen into full ownership upon a petition establishing full compliance with the terms of the concession agreement. The evidence showed that claimant had not met the conditions prerequisite to full ownership. Claimant's contention that the laws of Serbia were mandatory was rejected, and the Commission held that the extent of claimant's interest was equivalent only to the unexpired term of the concession on the date of nationalization of the quarry.

Another type of property right arising *ex contractu* was considered in a claim based upon a wholesale paper business which included contracts for the supply of paper and paper products to enterprises in Yugoslavia and in various other European countries. When Yugoslavia nationalized its economy, the government took over all paper mills, as well as related industries, such as the importation, exportation, and distribution of paper products; additionally, all cartels were abolished. Claimant contended that these measures constituted a taking of his property because his business became worthless. The record showed that the business had been liquidated by the owners or managers and that Yugoslavia had not nationalized or otherwise taken claimant's property rights. The Commission concluded that claimant's contract rights constituted property rights which had been frustrated by lawful action of Yugoslavia. However, the Commission held that Yugoslavia's actions did not amount to a taking of claimant's property, and that essentially his claim was based on loss of good will and future earnings, citing *Omnia Commercial Co., Inc. v. United States*, 261 U.S. 502 (1923). The court in that case stated, "When the Government, for war purposes, requisitioned the entire production of a steel manufacturer, rendering impossible and unlawful of performance an outstanding contract between the manufacturer and a customer, the customer's rights were not taken by the Government, but frustrated by its lawful action." Accordingly, the claim was denied. (*Claim of Frederick Fraenkel*, Docket No. Y-706, Final Dec. No. Y-356.) A discussion of indirect losses, such as loss of profits, good will, etc., appears in the *Claim of John Grisan*, at page 111.

Value of business and industrial property.—As indicated in the *Zetina* decision, the Commission initially denied the claim for the concession on the ground that claimant had failed to sustain the burden of proving the value of the concession on the date of nationalization. Pursuant to Section 531.6(d) of the Commission's Regulations (appearing at page 773), a claimant had the burden of proof on all issues involved in his claim. Accordingly,

if a claim was otherwise valid, no award would issue unless the value of the property was established. The Commission assisted claimants in these respects by maintaining a Field Office in Belgrade, Yugoslavia, which conducted investigations with respect to claims. In a number of instances, Yugoslavia furnished valuation reports in connection with specific claims. Conjecture, unfounded estimates and other unreliable information were disregarded by the Commission.

Claimant's objections to the Proposed Decision, supported by documentary evidence and testimony presented at an oral hearing before the Commission, were held sufficient to allow the claim for the loss of the concession. The value of the quarry on the date of nationalization was the measure of the award in the *Zvetina* case, an issue discussed in the *Claim of Joseph Senser*, appearing at page 149. Accordingly, the physical assets of the business were evaluated, and the value of the concession was determined on the basis of its unexpired term as of the date of nationalization. The value thereby obtained was then reduced by outstanding mortgages, a principle discussed in the *Claim of Manfred Sternberg*, at page 62.

Obviously, if any mortgages had been paid and discharged before the date of nationalization, they would have been disregarded by the Commission although not recorded in the pertinent land registers. Deductions were made only to the extent of the mortgage indebtedness on the date of nationalization or other taking of the encumbered property. It will be noted in the Final Decision on the *Zvetina* claim that the Commission declined to consider two mortgages because the mortgagees had instituted suit for the debts against the claimant mortgagor. The suit was still pending on December 30, 1954 when the Final Decision on this claim was entered. Pursuant to the provisions of the 1949 Act, the Commission was directed to complete the Yugoslav claims program no later than December 31, 1954. So-called security mortgages for the purpose of securing a line of credit were ignored if the obligations never came into existence. Mortgages on property of nationalized corporations in favor of stockholders of the same corporations were not recognized pursuant to the Yugoslav Claims Agreement of 1948 if the stockholder claims were compensable under the Agreement. This issue appears in the *Claim of Virginia Howard*, at page 113.

The Commission had to consider numerous other claims involving business and industrial property in Yugoslavia. No strict rules were applicable for the evaluation of such property, but the values were determined on the merits of each claim, and to assure uniformity and consistency, values were compared with similar or identical property items. For example, in the claim for the nationalization of an electric power plant in Novi Sad, Yugoslavia, the Commission determined its value by considering an inspection and appraisal of the physical assets of the plant, a straight-line depreciation of these assets on the basis of the capital invested, and the capitalization of earnings for the prewar years. In all three methods weight was given to the financial data, inventories, reports and analyses furnished by Yugoslavia. The Commission recognized appreciation in value of

some assets due to the world-wide increase in the cost of the equipment, but declined to consider increases occasioned by the temporary fact of war. Deductions were made for liabilities, but not all liabilities were included in the deductions. If the Commission found that the assets of a nationalized enterprise were exceeded by its liabilities, no award was granted because the equity of the owners of the enterprise was worthless. Judgments entered after nationalization by virtue of lawsuits brought by individuals for wages said to have accrued prior to the war were ignored. The Commission took the position that these judgments were entered without the participation by claimant in the proceedings, and were based upon laws enacted after the property was taken. On the other hand, one judgment entered in 1926 ordering payment of disability compensation to an injured workman was recognized as having created a valid obligation of the plant and an appropriate deduction was made. (*Claim of Amerikansko-Jugoslovensko Elektricno Drustvo (American-Yugoslav Electric Company)*, Docket No. Y-252, Dec. No. Y-1485.)

Among the industrial enterprises nationalized by Yugoslavia was a large textile plant in Dugaresa, in which American investors had a substantial interest. In evaluating the net worth of the corporation, the Commission considered not only financial statements and appraisals furnished by the claimants but inspections made on-the-spot by the Commission's own experts. These experts examined the company records, interviewed former and present employees, public officials and experts of the Yugoslav Government who had prepared official appraisals of inventories and other company assets. The value of the "Dugaresa" stock on the date of nationalization, as determined in the Proposed Decision, was increased in the Final Decision upon consideration of objections supported by new evidence consisting of bills and invoices, price quotations, production reports, additional appraisals, and testimony of two textile experts at an oral hearing before the Commission. (*Claim of Estate of Otto Anninger, Deceased*, Docket No. Y-390, Dec. No. Y-1474.)

In other cases, the Commission evaluated stock interests on the basis of stock market quotations, prices paid for purchasing the stock, as well as published balance sheets and other financial statements of the corporations. (*Claim of Herbert Feigl*, Docket No. Y-363, Dec. No. Y-941.)

Consideration was also given to reports of the Yugoslav Government concerning the value of assets. For example, Yugoslavia reported that the assets of a bank were completely offset by its liabilities and that after liquidation of the bank no assets whatsoever remained for the satisfaction of stockholders. Since the record supported the conclusion, the claim was denied. (*Claim of Mile Kukich*, Docket No. Y-1585, Dec. No. Y-1358.)

In the claim of the United States of America for confiscation of a jeep and two transport airplanes which were shot down over Yugoslavian territory in 1946, the Commission's evaluation was supported by official government records. (*Claim of the United States of America*, Docket No. Y-1057, Dec. No. Y-1214.)

JOHN GRISAN

Against the Government of Yugoslavia

Taking of property in area of Pula, Istrian peninsula, in 1942 was not a taking by Yugoslavia under Yugoslav Claims Agreement of 1948 and Section 4(a), Title I of the 1949 Act because Pula was then a part of Italy.

Date of nationalization pursuant to Second Nationalization Act of 1948 was April 28, 1948, date on which it became effective, for purposes of Section 4(a).

Indirect damages, such as loss of use of property and loss of profit or income from property, denied under Section 4(a) because such losses are conjectural, speculative, not susceptible of accurate determination and not recognized under international law.

PROPOSED DECISION

This is a claim for \$9,000 by John Grisan, a citizen of the United States since his naturalization in the United States on January 24, 1930, and is for the taking by the Government of Yugoslavia of two stone houses of five and two rooms, respectively, with a yard, located at Via San Martino #38, and a vegetable garden at Via Mutila, both located in Pula, Yugoslavia, and income therefrom.

Extracts from the Land Register of the County Court of Pula (Docket Nos. 2790 and 2314, Cadastral District of Pula) filed by the Government of Yugoslavia and admissions of that Government establish that claimant owned two parcels of land with a total area of 667 square meters, with structures on one of the parcels.

The Commission finds it established from the land records above referred to and admissions of the Yugoslav Government, that the property recorded under Docket No. 2790 was taken by the Government of Yugoslavia on April 28, 1948, on the basis of a decision of the People's Committee of the City of Pula, Section for Communal Affairs, Conf. No. 86/53-1/4-Ek of July 13, 1953, pursuant to the Second Nationalization Act of April 28, 1948 (Official Gazette No. 35 of April 29, 1948).

As to the property recorded under Docket No. 2314, the Government of Yugoslavia asserts, and the certified extract from the land register covering this property referred to above shows, that this property was expropriated on the basis of a decision of the Prefect for Istria, of May 3, 1942, No. 8287/IV and that the right of ownership was recorded in favor of the Municipality

of Pula (Commune di Pola). The Government of Yugoslavia further reports that at the time of the expropriation proceedings, the sum of 9,387.50 lire was paid in compensation for this property. In 1942 the Municipality of Pula was a part of the sovereign Government of Italy. It is evident, therefore, that this parcel of land was not nationalized or otherwise taken by the Government of Yugoslavia. The Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia settled all claims for the "nationalization or other *taking by Yugoslavia* of property" (Article 1). Accordingly, that part of the claim based on the taking of the property recorded under Docket No. 2314 does not come within the jurisdiction of this Commission and must be denied.

Claimant alleges that he acquired the property recorded under Docket No. 2790 by purchase for about \$3,500 in cash and \$2,500 in other valuable consideration, and that he improved it at a cost of about \$1,000. He has filed no other corroborating evidence of the value of the property. A three-party committee designated by the local Yugoslav authorities appraised the land and structures at 13,700 dinars. An investigator for this Commission appraised the land at 30,150 dinars and the structures at 69,053 dinars, after deducting war damage of 12%, which is not compensable under the Agreement with Yugoslavia. Both appraisals were made on the basis of 1938 values.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of all property of claimant which was taken by the Government of Yugoslavia was 99,203 dinars as of the year 1938.

Claimant asks compensation for the loss of income from the property. Claimant filed no corroborating evidence on the matter.

The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act of 1949 to apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law, justice and equity, in that order. The Agreement between the Governments of the United States and Yugoslavia contains no specific provision regarding loss of use of property, loss of profits, and the like. Generally, international and domestic arbitral tribunals in the determination of international claims allow compensation for indirect damages such as loss of use of property, loss of profits and the like, if such losses are reasonably certain and are ascertainable with a fair degree of accuracy. They do not allow compensation for indirect damages if they are conjectural or speculative or not reasonably certain or susceptible of accurate

determination. (See Borchard, *Diplomatic Protection of Citizens Abroad*, §§ 172, 173 and cases cited therein.)

We are of the opinion that it has not been proven that it was reasonably certain that the profits expected or any profits would have been realized by claimant. The claim for such profits must therefore be denied. However, claimant may be compensated in terms of interest for the loss of the use of the compensation he was entitled to receive on the date the property was taken, from the date of taking to the date of payment by the Government of Yugoslavia. Both the Agreement with Yugoslavia and the International Claims Settlement Act contemplate the allowance of interest by the Commission for the delay in payment of compensation by the Government of Yugoslavia.

According to the above-mentioned extracts and reports, the property recorded under Docket No. 2790 was encumbered by a mortgage dated June 21, 1946 in favor of the Allied Military Administration (Governo Militare Alleato), Venezia, Giulia, in the face amount of 50,000 lire. The Government of Yugoslavia reports that this encumbrance came into being by reason of repairs made by the Allied Military Government to the two buildings because of war damage to these structures.

The Government of Yugoslavia, and the Commission's own investigator, both evaluated the work done in repairing such war damage as 12% of the value of the structures. However, since 12% was deducted for war damage in the appraisal of the property it would clearly be unjust to deduct it again. In the circumstances, we are of the opinion that a deduction for the mortgage should not be made.

The Commission finds that the net value of the property of claimant which was taken by the Government of Yugoslavia was 90,917 dinars, which converted into United States dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon evaluations as of the year 1938, equals \$2,066.30.

Claimant's counsel has requested the Commission, in writing, to determine his fee, and asserts that his contract with the claimant is for a fee of 10% of the award.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to John Grisan (also known as Giovanni Grisan), claimant, in the amount of \$2,066.30 with interest thereon at 6% per annum from April 28, 1948, the date of

taking to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$39.06.

The Commission determines that 10% of the total paid pursuant to such award shall be paid to Harvey L. Rabbitt, counsel for claimant.

Dated at Washington, D.C.
September 9, 1954.

Taking of property by a government other than Yugoslavia.—Claimant in this claim had asserted the loss of certain land in the city of Pula, which was a part of the sovereign Government of Italy until 1947, when Yugoslavia acquired jurisdiction over that city. The record showed that the property had been expropriated by the duly constituted authorities of Pula in 1942, and that payment for this loss had been made. By recognizing the fact of expropriation, the Commission gave full force and effect to the actions of a sovereign, an issue which is discussed in the *Claim of Lucie C. Rosenberg*, at page 135. Accordingly, whether Yugoslavia subsequently took the property after it had acquired jurisdiction over the area (which was not established by the evidence) was immaterial because the property no longer belonged to claimant. Claimant in effect conceded the fact that he had been divested of title by asserting in his objections to the Proposed Decision a new claim for the taking of the proceeds deposited in a bank to his credit. However, he was unable to substantiate his claim in this respect. In any event, his claim for the loss of the land was denied on the ground that Yugoslavia did not nationalize or otherwise take his property.

It may be noted at this point that the Commission adhered to the rule of international law that decrees of a state are not entitled to be given extraterritorial effect. Therefore, if it had been asserted by this claimant that Yugoslavia had decreed the taking of his property in 1942, the same conclusion would have been reached; namely, that the property was not nationalized or otherwise taken by Yugoslavia.

However, this claimant was granted an award for the loss of other real property, situated in the same city, which was taken by Yugoslavia in 1948, when it already possessed sovereign authority in that area. A clerical error in computing the amount of his loss was corrected by the Final Decision which increased his award accordingly.

In another claim, claimant asserted the loss of real property in Fiume (now known as Rijeka), a city which was under Italian sovereignty until September 15, 1947, the date of the Italian Peace Treaty, pursuant to which the city of Fiume was incorporated into Yugoslavia. It appeared from the record that claimant's property was within the purview of the Enemy Property Law of November 21, 1944, which effected a taking of property

belonging to persons of ethnic German origin. Again, the Commission refrained from giving extraterritorial effect to the Yugoslav law. The Commission, therefore, held that the Enemy Property Law of November 21, 1944 did not affect claimant's property in Fiume (Rijeka). The Proposed Decision was affirmed insofar as this issue is concerned. (*Claim of Helma Marguerite de Thierry*, Docket No. Y-291, Dec. No. Y-300-A.)

Similarly, the Commission denied claims for the taking of real property by Yugoslavia in the area of Trieste (Free Territory of Trieste) because Trieste was not subject to the jurisdiction of Yugoslavia, and title to real property in the area could not have been acquired by Yugoslavia. Actually, the control of property in that area was in the nature of temporary administration by occupation authorities until the status of Trieste was settled by subsequent agreements. (*Claim of Mary Rongetti Moffa*, Docket No. Y-683, Dec. No. Y-627.) A claim for real property allegedly taken in 1945 by Yugoslav authorities in Portorose was denied on the same ground. The property was located in the so-called Zone "B" of occupation by Yugoslavia, which was not under Yugoslav sovereignty until an agreement, concluded on October 5, 1954, between Italy and Yugoslavia, transferred the area of Portorose to Yugoslavia. (*Claim of Alexander Chierago*, Docket No. Y-1309, Dec. No. Y-774.)

Effective date of taking.—The effective date when property was taken by Yugoslavia was a basic issue that engendered much research and discussion within the Commission, and with respect to claimants it often resulted in objections and oral hearings. Administering a remedial statute that required decisions to be determined in accordance with the Yugoslav Claims Agreement of 1948, as well as "applicable principles of international law, justice, and equity" (Section 4(a) of the 1949 Act), the Commission was fully cognizant of its grave responsibility, particularly in the light of the fact that Article 3 of the Agreement expressly barred claims that were not owned by nationals of the United States on the date of taking. Of lesser importance was the related question of interest on awards, which the Commission allowed for the period from the date of taking to the date of payment by Yugoslavia. (*Claim of Joseph Senser*, appearing at page 152.)

In the instant claim, the Commission held that the effective date of nationalization under the Second Nationalization Act of 1948 was the date of publication, April 28, 1948, in accordance with express provisions of that law. The decision of the local authorities, dated July 13, 1953, which appeared to affect claimant's property, was regarded as procedural, merely confirming the fact that the property had already been taken. As indicated in another case, the law of April 28, 1948 was self-executing by its very terms. (*Claim of Elias Mann*, Docket No. Y-324, Dec. No. Y-29.)

Personal property, in general, was held not to be within the purview of the law of April 28, 1948, unless it was directly connected with one of the industries specified in the law. A further reason for denying a claim in which the applicability of the law of April 28, 1948 was in issue was the fact that the property had

been taken previously under another law of Yugoslavia. In effect, therefore, the Commission ruled that property, once having been taken by Yugoslavia, could not be taken again by the same authorities unless it was returned in the interim. (*Claim of Abe Adolph Bochner*, Docket No. Y-742, Dec. No. Y-285; *Claim of Flora Ella Schermer*, Docket No. Y-1238, Dec. No. Y-372.)

This very question was involved in a claim in which it was established that certain property, apparently taken under the law of April 28, 1948, was restored to the owner upon appeal to the authorities. The claim was denied because the record failed to show any nationalization or taking of the property during the statutory period, September 1, 1939 to July 19, 1948. (*Claim of Alfred Schutz*, Docket No. Y-1097, Dec. No. Y-637.) A discussion of claims concerning the taking of property by Yugoslavia after July 19, 1948 appears below at ptge 110.

Several claims were presented by so-called "dual nationals," persons who possessed both United States and Yugoslav nationality at the time their properties assertedly were taken by Yugoslavia. Determinations on these claims involved consideration of the two laws under which Yugoslavia nationalized property. The first statute, the Nationalization Law of December 5, 1946, nationalized 12 kinds of "economic enterprises of general, national and republican importance." In accordance with express provisions of that law, December 5, 1946 was held to be the effective date of taking of property to which the law was applicable. (*Claim of Cisatlantic Corp., et al.*, Docket No. Y-1113, Dec. No. Y-951.) The second one, the Nationalization Law of April 28, 1948, nationalized additional "economic enterprises," and certain real property, including "all real property owned by foreign citizens." By necessary implication, real property of Yugoslav nationals was exempt from nationalization, a conclusion in which Yugoslavia officially concurred. It was the policy of Yugoslavia to consider such dual nationals as Yugoslav citizens unless they had obtained a release from Yugoslav nationality. For the foregoing reasons, dual national claimants alleging the loss of real property pursuant to Yugoslav nationalization decrees were denied relief on the ground that their properties had not been nationalized or otherwise taken by Yugoslavia. Moreover, it appeared from the claims involved that Yugoslavia had not interfered with claimants' ownership or possession. (*Claim of Ana Martincic*, Docket No. Y-547, Dec. No. Y-646.)

An interesting contention in one such claim was that claimant never acquired nationality of Yugoslavia and that his property, therefore, was nationalized under the law of April 28, 1948. Upon considering at length the history of Yugoslavia, which was carved out of the former Austro-Hungarian Empire after World War I, the Commission concluded that claimant was a Yugoslav national whose property was not subject to the law of April 28, 1948, and denied the claim. (*Claim of Mile Raseta*, Docket No. Y-1112, Dec. No. Y-853, Final Decision.) The related issues of nationality and the status of a dual national are discussed in the *Claim of Jerko Bogorich, et al.*, appearing on page 20.

With respect to the Enemy Property Law of November 21, 1944, similar questions relating to the effective date of taking

were presented. A careful study of that statute compelled the conclusion that property within its purview was taken on February 6, 1945, the date of publication in the Yugoslav Official Gazette.

The principle, enunciated in the *Claim of Elias Mann, supra*, that subsequent actions of Yugoslavia were merely procedural and did not change the effective date of taking, was held applicable to the Enemy Property Law of November 21, 1944. One Commissioner dissented, urging in one claim that the date of taking should be the date when the authorities determined that the property was subject to the law of November 21, 1944, but the majority view prevailed. (*Claim of Marie Rotter Gerrick*, Docket No. Y-269, Dec. No. Y-291.) The date when title was recorded in favor of Yugoslavia was, likewise, deemed procedural. (*Claim of Helen Kropf, et al.*, Docket No. Y-1447, Dec. No. Y-650.) Similarly, all property owned by a person to whom the law was applicable was held effectively taken "regardless of the law or procedure selected by Yugoslav authorities for the taking of part of his property." (*Claim of Anton Lambert*, Docket No. Y-1547, Dec. No. Y-952.)

Yugoslavia had also provided for the confiscation of property belonging to persons considered war criminals or collaborators by the enactment of Article 10 of the Law Regarding Criminal Offenses Against the People and the State of August 25, 1945, and Article 9 of the Law Against Illicit Speculation and Economic Sabotage of April 23, 1945. Confiscation was accomplished by executing sentences of the criminal courts. The effective date of taking under those statutes was the crucial issue in several claims because a favorable determination depended upon an affirmative answer to the question whether the claim was owned by a national of the United States on the date of taking.

Upon careful consideration of this issue, the Commission concluded that the effective date of taking was the date when the criminal court sentence became final, relying upon decisions of the Supreme Court of the United States which held that a judgment is final "when it terminates the litigation on the merits and leaves nothing to be done but to enforce by execution what has been determined." (*Claim of Edith Neuman de Vegvar*, Docket No. Y-1275, Dec. No. Y-1460; *Claim of Estate of Otto Heinrich, Deceased*, Docket No. Y-1654, Dec. No. Y-1397.)

The same principle was applied in connection with the Expropriation Law of April 1, 1947, and the Commission held that the date of taking was "the date the expropriation decision became final," which conformed with the provisions of the law. (*Claim of Lazar Ivanisevich*, Docket No. Y-1518, Dec. No. Y-670.)

The date of taking under the Law on Agrarian Reform and Colonization of November 24, 1945 was determined to be the date when the law was implemented by decision of local Yugoslav authorities. (*Claim of Toma Plesa, et al.*, Docket No. Y-1013, Dec. No. Y-1041.)

Pursuant to the Abandoned Property Law of August 2, 1946, provision was made for the disposition of property abandoned during World War II. The statute authorized heirs or near relatives of the property owner to initiate proceedings for the return

of the property within one year from the effective date of the law, or from the date the vanished owner is declared dead, or where "the owner does not show up." Upon the failure to institute proceedings within this time limit, title to the property passed to Yugoslavia. Since the effective date of the law was August 17, 1946, the Commission held that the date of taking under the Abandoned Property Law was August 17, 1947. (*Claim of Erna Robich*, Docket No. Y-1642, Dec. No. Y-1162.)

In some isolated cases the control of property by Yugoslav authorities immediately after World War II, while initially justified because no one appeared to claim the property, ripened into a taking of the property. This was another example of how abandoned property was treated in Yugoslavia, although in the claim in question the property was not taken under the Abandoned Property Law of August 2, 1946. It appeared in that case that relatives of the owner attempted to sell the property in 1947 and 1948 but were prevented from doing so by the Yugoslav authorities who had custody. The Commission held that Yugoslavia had taken the property, and in the absence of evidence to the contrary the Commission ruled that the date of taking was May 7, 1945, the end of hostilities in Europe. (*Claim of Michael Zuzich, et al.*, Docket No. Y-732, Dec. No. Y-1196.)

Two related claims involved a textile plant confiscated on August 18, 1945 pursuant to the judgment of a military court which tried claimants *in absentia*. Claimants, who had acquired nationality of the United States in 1946, contended that the action of Yugoslavia constituted a denial of justice and urged the Commission to hold that the taking of their property occurred after they became Americans. The Commission concluded that the textile plant was taken on August 18, 1945, the date of the military court sentence. It may be noted that a textile plant of the size involved in this claim, generally, was within the purview of the Nationalization Law of December 5, 1946, and if that law had been applicable, claimants would have been granted awards. The rule, noted above in connection with the *Claim of Abe Adolph Bochner*, that property could not be taken twice by the same authorities, was applied and the claims were denied. (*Claims of Frank Thomas Mautner, et al.*, Docket Nos. Y-877 and Y-1117, Dec. Nos. Y-1370 and Y-1371.)

Taking outside the statutory period.—The Yugoslav Agreement provided for the settlement of claims arising on account of the nationalization of property occurring between September 1, 1939 and July 19, 1948. Accordingly, recovery was denied in a claim based on a taking by a state cooperative because evidence before the Commission disclosed that such takings did not occur before 1949. (*Claim of Danny Radcany*, Docket No. Y-1495, Dec. No. Y-1209.) A portion of the *Claim of Jerko Bogorich, et al.*, appearing on page 14, based upon items of property taken by Yugoslavia after July 19, 1948, was denied for the same reason.

In a claim based on an interest in a corporation which owned bonds of a railroad which operated under a 1905 concession from the Hungarian Government in an area then a part of Hungary, the Commission ruled that the annexation in 1919 of a portion of the railroad's right of way by Yugoslavia, and the taking

over of the operation of the railroad by the Governments of Yugoslavia and Rumania did not constitute a taking within the period established by the Yugoslav Agreement of 1948, and recovery was denied. (*Claim of William John Fellner*, Docket No. Y-1040, Dec. No. Y-572.)

In another claim it was asserted that the subject property was taken pursuant to the Peace Treaty of Saint Germain in 1919 and a 1921 Decree of the Yugoslav Government establishing a government-operated experimental farm. The Commission denied the claim because the taking of the property occurred prior to September 1, 1939, the beginning of the statutory period. (*Claim of General Real Estate and Trading Corporation*, Docket No. Y-1299, Dec. No. Y-456.)

A claim arising out of the taking of property pursuant to a law of February 6, 1945, a date within the statutory period, was inherited in 1949 by a United States national who in 1952 assigned his rights with respect thereto to his daughter, also a United States national. The Commission recognized the assignment after the statutory period of a claim arising from a taking prior to the Agreement, and an award issued to the assignee. (*Claim of Charles Anthony Perle, et al.*, Docket No. Y-1570, Dec. No. Y-1025.)

Although property losses in Yugoslavia after July 19, 1948 were not covered by the Yugoslav Claims Agreement of 1948, a subsequent agreement was signed on November 5, 1964 and entered into force on January 20, 1965, under which the Government of Yugoslavia agreed to pay \$3,500,000 in full settlement and discharge of claims of nationals of the United States on account of the nationalization or other taking of property which occurred between July 19, 1948 and the date of the new agreement. (Agreement with the Socialist Federal Republic of Yugoslavia Regarding Claims of Nationals of the United States, November 5, 1964, [1965] 16 U.S.T. 1, T.I.A.S. No. 5750 (entered into force January 20, 1965), appearing at page 762.) The Commission is presently administering this claims program.

Indirect losses.—In many cases, claims were made for indirect losses, such as loss of profit or income from property and loss of use of property. The Commission followed the accepted rule of international law that such losses were not compensable because they were conjectural, speculative, and not susceptible of accurate determination. Moreover, the Commission noted that the Yugoslav Claims Agreement of 1948 “does not specifically provide for the loss of income from property” and all such claims were denied. (*Claim of Jacob Holler, et al.*, Docket No. Y-366, Dec. No. Y-730.) Commenting further in a similar claim, the Commission stated that “it has not been proved that it was reasonably certain that the profits expected or any profits would have been realized by claimant.” (*Claim of Frank Dorner*, Docket No. Y-626, Dec. No. Y-858.) Another claim for loss of income and other benefits accruing after nationalization was denied because such income and benefits belonged to Yugoslavia, and not the claimant. (*Claim of Ladislav Segoe*, Docket No. Y-492, Dec. No. Y-526.)

Instead, in all such cases claimants were compensated in terms

of accrued interest on the awards computed from the date of taking to the date of payment by Yugoslavia. (*Claim of Joseph Senser, appearing at page 152.*)

Where the record showed that while property was under government administration the administrator reduced rents by 50%, it was held that this action constituted a taking of rents for the period prior to the date the real property was nationalized by Yugoslavia. (*Claim of Manfred Sternberg, appearing at page 50.*)

In the Matter of the Claim of

Docket No. Y-1282

Decision No. Y-1269

VIRGINIA HOWARD

Against the Government of Yugoslavia

Claim based upon a loan to a corporation was not within the purview of the Yugoslav Claims Agreement of 1948 because such debt was not "taken" by Yugoslavia. A stockholder of a corporation who elected to exercise his option to recover under the Agreement ipso facto released Yugoslavia of the debt owed him by the same corporation pursuant to Article 4(c) of the Agreement.

PROPOSED DECISION

This is a claim for \$9,365.70 by Virginia Howard, a citizen of the United States since her naturalization on November 14, 1944, and is for the nationalization by the Government of Yugoslavia of "Higiea" Tvrnica Cepova d.d. Zagreb, hereinafter designated as "Higiea," a Yugoslav corporation, in which corporation claimant owned 1,080 shares of capital stock and which corporation was indebted to claimant for loans in the amount of 137,381 dinars, made prior to the war.

The Government of Yugoslavia admits that the above-mentioned corporation was nationalized on December 5, 1946, pursuant to the Law Regarding Nationalization of Private Enterprises (Official Gazette No. 98 of December 6, 1946).

If this claim were based solely on a debt owed by "Higiea," it would not appear that it would be compensable from the fund created by Article 1 of the Agreement of July 19, 1948 with Yugoslavia for the reason that the debt remains valid and subsisting and has not been "taken" by Yugoslavia. Article 4(c) of the Agreement provides:

The Government of Yugoslavia recognizes the obligation of the successor enterprises created by it with respect

to debts valid under Yugoslav law which were incurred prior to the nationalization or other taking, for the benefit of the enterprises nationalized or otherwise taken

The debt in question would appear to fulfill the conditions set out in that Article and, accordingly, since Yugoslavia recognizes the debt, no claim would arise for its "taking."

However, the claimant has based her claim not only on the taking of a debt owed by "Higiea" but on the nationalization or taking of "Higiea" by the Government of Yugoslavia. The proviso immediately following the quotation above recites:

. . . provided, however, that there shall be deemed fully settled and discharged all debt obligations of enterprises, nationalized or otherwise taken, owing to nationals of the United States whose claims against the Government of Yugoslavia with respect to the nationalization or other taking of such enterprises are claims which are fully settled and discharged by the agreement

Since we shall allow the claim for the taking of "Higiea" by the Government of Yugoslavia, that claim was fully settled and discharged by the Agreement. That being so, the debt obligation is also settled and discharged and no claim with respect thereto may be allowed.

This proviso was explained by the Senate Committee on Foreign Relations in its report on the bill which became the International Claims Settlement Act of 1949 as follows:

In article 4(c) the Yugoslav Government recognized the obligation of successor enterprises for the valid debts of predecessor enterprises nationalized or otherwise taken. An exception is contained as to a limited category of such debts. Where a person participates in the \$17,000,000 distribution as the owner of an enterprise, he releases the Yugoslav Government from a debt obligation to the same person with respect to the same enterprise. The negotiators understood such cases of creditor-owner to be few in number and subject to the criticism that owners having control of an enterprise might have been in a position to enter questionable debts on its records. It was agreed that should an owner exercise the option of claiming dollar compensation for his ownership interest, he would release the Yugoslav Government of the debt obligation, such obligations being in all then known instances dinar obligations. (Senate Report No. 810, 11, 81st Cong., 1st Session.)

It may also be remarked in this connection that the Senate Report contains the following statement with respect to debt claims generally:

. . . the claims settled do not include creditor interests. They are confined to ownership interests in property,

either legal or beneficial, direct or indirect. This is consistent with traditional United States policy in connection with espousals. (*idem.*)

We hold, therefore, that claimant's debt claim has been fully settled and discharged, since, as we shall hold, her claim for the nationalization or taking of "Higiea" has been settled and discharged under the Agreement. Therefore, the claim with respect to the debt must be denied.

With respect to the 1,080 shares of "Higiea" stock, it appears from the evidence filed by claimant that her father, David Moeller, was the owner of 1,200 shares of "Higiea" stock; that on April 26, 1941, in Zagreb, Yugoslavia, he deposited them with one Dinko Vucetic, a son-in-law of his business associate; that Mr. Vucetic, in writing, confirmed that this stock would be returned to Mr. Moeller "or to the person he will designate . . . as soon as the actual situation permit."

It further appears from the evidence filed that Mr. Moeller left Yugoslavia, after he deposited the "Higiea" shares of stock, as stated above, and for a time took refuge in Trieste; that before the German armed forces occupied Trieste, he fled to Todi, Italy to escape persecution, and while residing in Todi, and on or about December 24, 1944, he executed an instrument (on official Italian stamped paper (Carta Bollata) to which there was affixed a revenue stamp) by the terms of which he "donated" 1,080 shares of "Higiea" stock to his daughter, the claimant herein. At that time, prevailing conditions prevented the return of the shares of stock by Mr. Vucetic to Mr. Moeller or his nominee. In the prefatory paragraph of the instrument of donation, the donor stated that he was living and hiding in Todi because he was persecuted by reason of "politic" and he did "not want to enact a public document which could have the effect to signalize his present residence."

The "donation" (gift) by Mr. Moeller to claimant was without reservation or conditions. The "donor" stated "I express herewith my will to donate—as in effect I donate—to my daughter, Virginia Moeller, married to Herz Howard . . . one thousand eighty shares of H.I.G.I.E.A. . . ." Following his signature to the instrument, he repeated that he "donates" the above shares, and in a letter addressed to claimant, dated November 20, 1944, wrote that he had taken the decision to donate to claimant his 1,080 shares of "Higiea." A donation *inter vivos* is an act by which the donor divests himself at present and irrevocably of the thing given in favor of the donee who accepts. Manual delivery is not considered essential in all cases. The general rule is that a gift of property evidenced by a written instrument executed by the donor is con-

summated by a delivery of the instrument without a manual delivery of the property, especially where it is not in the power of the donor to make manual delivery. The intention to give, manifested by the words or actions of the donor, is often the crucial test in determining whether there was a constructive delivery of a gift *inter vivos*.

The Government of Yugoslavia admits that the claim for the stock is well-founded if claimant proves that a fictitious gift was not involved in order to insure payment under the terms of the Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia. The Commission finds that the gift was valid. Since it was made on December 20, 1944, it is reasonable to assume that the donor, then residing in Italy, could not have anticipated that "Higiea" would be nationalized two years later or that the Agreement of July 19, 1948 would be concluded about four years later.

The Commission is of the opinion, on the basis of all evidence and data before it, that claimant was the lawful owner of 1,080 shares of "Higiea" stock when that corporation was nationalized on December 5, 1946 and that the fair and reasonable value of this stock was 250 dinars per share, for a total of 270,000 dinars. That amount, converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission for the payment of awards based on 1938 valuations, equals \$6,136.36.

AWARD

On the above evidence and grounds, the claim is allowed and an award is hereby made to Virginia Howard, claimant, in the amount of \$6,136.36, with interest thereon at 6% per annum from December 5, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$630.45.

Dated at Washington, D.C.
September 15, 1954.

Creditor claims.—Almost every business transaction involves some aspect of credit, whether it be a simple deposit in a bank, the purchase of a car or house, or the countless numbers of business deals with manufacturers, wholesalers, retailers and consumers. Credit is also extended when one engages the services of a professional practitioner, a mechanic or an ordinary worker.

It was therefore to be anticipated that many claims against Yugoslavia would fall within the category of creditor claims.

As indicated by the decision on the instant claim, the Commission held that unsecured creditors' claims were not settled or discharged by the Yugoslav Claims Agreement of 1948, relying on the legislative history of the statute and the language of the Yugoslav Claims Agreement of 1948. (Claims of secured creditors, such as mortgagees, are discussed in the *Claim of Manfred Sternberg*, appearing at page 62.) In the favorable report of the Senate Committee on Foreign Relations on H.R. 4406, the bill that became the International Claims Settlement Act of 1949, the following statement appears:

... the claims settled do not include creditor interests. They are confined to ownership interest in property, either legal or beneficial, direct or indirect. This is consistent with traditional United States policy in connection with espousals. (S. Rep. No. 800, 81st Cong., 1st Sess., 11 (1949).)

Article 4(c) of the Agreement clearly indicated that Yugoslavia recognized the validity of existing debts incurred by enterprises it had nationalized or otherwise taken. Accordingly, the Commission denied all such claims. However, Article 4(c) contained an unusual provision relating to stockholders of nationalized enterprises. The creditor claim of such a stockholder was settled and discharged by the Agreement if his claim as a stockholder was within the purview of the Agreement. On this basis claimant, Virginia Howard, received an award for the loss of her stock interest in a nationalized Yugoslav corporation, but was denied recovery for her debt claim against the same corporation.

Applying the same principle, the Commission denied the claims of persons who owned indirect interests in a nationalized Yugoslav corporation through stock interests in a holding company. Two of the claimants who were United States nationals on the date the Yugoslav corporation was nationalized were granted awards for their indirect stock interests. Recognition of an indirect stockholder claim was provided for in Article 2 of the Agreement. Their indirect debt claims, which arose in favor of the holding company, were held discharged pursuant to the express provisions of Article 4(c) of the Agreement. The other four claimants were denied relief altogether because they had not yet acquired nationality of the United States on the date of nationalization of the Yugoslav corporation. However, unlike the two claimants who received awards as stockholders, the indirect debt claims of these four claimants were not deemed discharged by the Agreement because their stockholder claims were not compensable under the Agreement. (*Claim of Leopold Pilzer, et al.*, Docket No. Y-1264, Dec. No. Y-1449.)

Various types of debt claims were filed with the Commission. A claim based upon debts against private parties for goods sold and delivered and services performed was denied because such debts were not covered by the Agreement. (*Claim of William S. Smyth*, Docket No. Y-1473, Dec. No. Y-1354.)

Another claim for debts arising out of rental of motion picture

prints and advertising matter was denied on the same ground. One Commissioner dissented, urging as the basis for a favorable determination that Yugoslavia had prohibited film rentals by private persons, had created a government bureau with a monopoly on the distribution of motion pictures, and had by many other measures taken practically all private property into state ownership, "which resulted in stripping debtors of the assets which otherwise could have been used to liquidate their debts, and in making it practically impossible for them to ever pay their creditors." These actions of Yugoslavia constituted, in the opinion of that Commissioner, a taking of rights and interests of the creditors. The majority view, however, prevailed. (*Claim of Universal Pictures Co., Inc.*, Docket No. Y-1509, Dec. No. Y-361.)

The Commission denied another debt claim on two grounds: one, that such a claim was not within the terms of the Agreement; and the other, that the corporation being bankrupt in 1938, and liquidated in 1942, had not been taken by Yugoslavia. (*Claim of Estate of Otto Wise, Deceased*, Docket No. Y-420, Dec. No. Y-1094.) A law firm filed a claim for services rendered in 1941 and 1942 in an unsuccessful attempt to attach and levy against personal property allegedly owned by a Yugoslav corporation. The Commission held that the law firm was merely a creditor of its client but not of the Yugoslav corporation; and even if it were a creditor of the corporation, the claim would still not be covered by the Yugoslav Claims Agreement of 1948. (*Claim of Wachtell, Manheim, & Grouf*, Docket No. Y-1183, Dec. No. Y-272.)

Bonds.—Three categories of American creditors, namely, creditors of nationalized enterprises, creditors of persons residing in Yugoslavia, and holders of Yugoslav dollar bonds, were specifically excluded from the fund created by the Yugoslav Claims Agreement of 1948; but were protected to the extent that Yugoslavia gave assurances that such obligations would be treated as subsisting. It was noted that before the Agreement was signed Yugoslavia had enacted laws providing for part payment of dinar bonds if registered in accordance with these laws. The Commission held that the failure to mention dinar bonds in the Agreement was not subject to the interpretation that they are compensable under the Agreement. Commenting further on the traditional policy of the United States not to espouse claims for defaulted government obligations, the Commission concluded that the failure to include dinar bonds in the Agreement was not inadvertent but intentional. Accordingly, claims based upon dinar bonds were denied. (*Claim of Jovo Miljus*, Docket No. Y-1561, Dec. No. Y-352-A.)

The policy of the United States was that a loan contract between a state and a foreign bondholder was not an international contract recognized under international law. Persons who purchased such bonds did so at their own risk. In the absence of a denial of justice or a confiscatory breach of the contract, the United States did not intervene on behalf of such bondholders. Moreover, Yugoslavia had enacted no laws affecting the holders of dollar bonds; rather, Yugoslavia recognized its international obligations with respect to dollar bonds issued or guaranteed by

predecessor Yugoslav Governments. The mere fact that Yugoslavia's dollar bond obligations were in default was deemed immaterial for the only issue was whether Yugoslavia nationalized or otherwise took property rights belonging to American dollar bondholders. Since there was no evidence establishing a taking of such property rights, dollar bond claims were denied. (*Claim of Owen Arthur Nash*, Docket No. Y-362, Dec. No. Y-38.) Claims based on bonds expressed in French francs or Swiss francs were also denied. (*Claim of Felix Wolf*, Docket No. Y-874, Dec. No. Y-385.)

Applying the same principle, claims based upon dollar bonds issued by Yugoslav municipalities (*Claim of Ivan Baran*, Docket No. Y-1694, Dec. No. Y-341) and pre-World War I bonds issued by Serbia and Bosnia-Herzegovina were denied for failure to establish a "nationalization or other taking" by Yugoslavia. (*Claim of Eric G. Kaufman*, Docket No. Y-778, Dec. No. Y-393.)

Pensions.—Claims arising from pensions due from enterprises nationalized by Yugoslavia were also in the category of creditor claims. In a typical case, claimant was a pensioner of a private coal mining company having its own retirement fund. By Decree of April 4, 1947, the pension fund became government property and Yugoslavia assumed the obligations thereunder, except that the pensions were to be computed in the same way as under the Yugoslav social security system. No pension benefits had been paid to claimant since October 1941, but there was no evidence to establish that Yugoslavia had repudiated its obligations to claimant. The Commission pointed out that Yugoslavia had affirmatively recognized claimant's right to a pension after World War II, and it appeared that claimant could claim his pension under the Decree of April 4, 1947, from the Social Insurance Institute of Yugoslavia in regular administrative proceedings. Accordingly, the claim was denied because there was no evidence to establish that Yugoslavia had taken claimant's property rights. (*Claim of Adolf Forster*, Docket No. Y-520, Dec. No. Y-1493.)

In the Matter of the Claim of

Docket No. Y-580
Decision No. Y-55

ANTON TABAR, ET AL.

Against the Government of Yugoslavia

Enactment of monetary reform laws in Yugoslavia and prohibition against transfer of funds outside of Yugoslavia were exercises of sovereign authority and did not give rise to claims under Yugoslav Claims Agreement of 1948 or international law unless the laws or their administration were discriminatory. Claims based on losses resulting from devaluation of Yugoslavian currency denied because devaluation did not constitute "nationalization or other taking" of property under Agreement and Section 4(a), Title I of the 1949 Act.

Claims based on bank accounts denied under Title I of the 1949 Act because Yugoslav nationalization decrees excepted bank accounts and merely provided for their transfer to the National Bank where rights of depositors were equivalent to those existing before transfer.

PROPOSED DECISION

This claim is before this Commission upon the proceeding of the Solicitor of the Commission pursuant to Section 300.16 of the Rules of Practice and Procedure of the Commission, and seeks the recovery of approximately eight thousand dollars, based upon a bank deposit account in Yugoslavia.

The claimants allege that they acquired in 1905 certain real estate in Yugoslavia from the mother and father of the claimant, Anton Tabar. This real estate was sold by claimants during a visit to Yugoslavia for that purpose in 1938 for the sum of 360,000 dinars, which sum was deposited in April 1939, as an internal dinar account, in the Veliko Beckerecka Savings Bank in Petrovgrad, Yugoslavia, just prior to claimants' return to the United States. The deposit was transferred in 1939 to the First Croatian Savings Bank in Zagreb, pursuant to Ministry of Finance permit No. 17317, and subsequent withdrawals reduced the balance to approximately 350,000 dinars, which has remained in the bank since 1939. The claimants then allege that the bank deposit was nationalized or otherwise taken by Yugoslavia through the failure of the Yugoslav Government to authorize transfer of the funds to the United States in the period prior to the outbreak of World War II and due to the impossibility of effecting a transfer after the war because of political conditions in Yugoslavia. The claimants accordingly claim the sum of 350,000 dinars, or approximately \$8,000 at the 1939 exchange rate of 44 dinars to the dollar.

Evidence before the Commission supports the facts alleged in the statement of claim.

To give the claim full consideration, we will discuss it as being one involving three propositions: (1) that the refusal or failure of Yugoslavia to permit the transfer of claimants' deposit to the United States constituted a "nationalization" or "other taking" of property, or of rights and interests in and with respect to property, within the meaning of the Yugoslav Claims Agreement of 1948; (2) that the Yugoslav Pre-War Obligations Settlement Law, in effect since November 13, 1945 (Decree No. 841, Official Gazette No. 88, November 13, 1945, as amended by Decree No. 66, Official Gazette No. 66, August 16, 1946), whereby claimants' deposit was reduced by 90 percent, constituted a "nationalization" or "other taking" of property, or of rights and interests in and

with respect to property, within the meaning of the Yugoslav Claims Agreement of 1948; and (3) that the reduced bank deposit (10 percent) was "nationalized" or "otherwise taken" by the Government of Yugoslavia, within the meaning of the Yugoslav Claims Agreement of 1948, by virtue of Yugoslav laws and decrees nationalizing and liquidating banks.

Exchange controls usually follow a general pattern whereby residents, nationals as well as nonnationals, must surrender their foreign exchange, gold and foreign securities; foreign currency must not be exported, and domestic currency must not be exported or imported; nonresident creditors cannot have the sum owed transferred, irrespective of the currency involved; and rates for foreign exchange and gold are fixed by government decree.

International law and the usual commercial treaties are no bar to exchange restrictions. So long as the control measures are not discriminatory, no principle of international law is violated.

Under the facts in this case, payment to the claimants was to be made in dinars. The bank account was an internal dinar account. Claimants had no right to receive dollar exchange. The Convention of Commerce and Navigation mentioned in Article 5 of the Yugoslav Claims Agreement of 1948 provides against discriminatory taxes or duties on property to be transferred out of the country involved; the Convention does not prohibit the imposition of foreign exchange controls. As claimants' dinar deposit was not the result of a "current" international transaction, as that term is defined in the Articles of Agreement of the International Monetary Fund, the imposition of exchange control did not violate the Agreement. A bank deposit is capital and the regulation of capital movements was reserved by this Agreement to the member states.

Claimants have produced no evidence that Yugoslav foreign exchange laws or their administration are discriminatory. The provisions of the Yugoslav postwar exchange control laws show that they are not discriminatory (Law Confirming and Amending the Law Pertaining to Regulation of Payment to Foreign Countries of September 2, 1945, No. 604, as amended, Official Gazette No. 86, October 25, 1946).

Article 10 (b) of the Yugoslav Claims Agreement of 1948 takes cognizance of "Yugoslav foreign exchange resources and regulations." The Department of State must have been satisfied that these regulations did not violate any principle of international law; otherwise it would not have consented to the provision.

By Article 11 of the same Agreement the Government of Yugoslavia, in effect, agrees to waive its foreign exchange regulations to the extent of giving "sympathetic consideration to applications

for transfers to the United States of deposits in banks of Yugoslavia and other similar forms of capital owned by nationals of the United States, where the amounts involved are small, but which, in view of the circumstances, are of substantial importance to the persons requesting the transfer." The inference to be drawn from this Article as it relates to foreign exchange regulations is that the Department of State found nothing discriminatory in the Yugoslav regulations as they affected other than small forms of capital.

The exchange of notes between the Secretary of State and the Yugoslav Ambassador, the date the Agreement was signed, shows that the Department of State considered the regulations as being nondiscriminatory, because the note from the Yugoslav Ambassador to the Secretary of State stated that Yugoslavia would "consider means of discharging such obligations (dollar bonds) when Yugoslavia's economic condition, seriously impaired by the ravages of war, and her foreign exchange position permit."

In view of the foregoing, the refusal or failure to permit a transfer to the United States of claimants' deposit does not amount to "nationalization" or "other taking" of property or of rights in and with respect to property.

We now turn to the question, did the Yugoslav law, whereby claimants' deposit was reduced 90 percent, constitute a "nationalization" or "other taking" of property or of rights and interests in and with respect to property within the meaning of the Agreement?

Between the liberation and the passage of the Law on the Settlement of Pre-War Obligations, effective November 13, 1945, five different laws were passed by Yugoslavia, dealing with the exchange rates for the withdrawal and exchange of occupation currency and for the settlement of obligations.

The first law, dated April 5, 1945 (Official Gazette No. 20 of April 10, 1945), established the dinar as the currency unit of the Democratic Federated Yugoslavia (Article 1). Occupation currency was to be withdrawn from circulation (Article 2).

The second law, dated April 5, 1945 (Official Gazette No. 23 of April 19, 1945), by Article 11, imposed a moratorium on the payment of obligations which arose in Yugoslav dinars before April 18, 1941, even though they had been transformed into occupation currency, and which were unpaid at the date of the publication of the law. The exchange of occupation currencies was effected according to exchange rates set forth in Article 3.

Articles 10 and 11 of the Law Covering the Exchange Rates for the Withdrawal of Occupation Currency and the Settlement of Obligations in the Territory of Bosnia and Herzegovina, dated

June 7, 1945 (Official Gazette No. 41 of June 14, 1945), postponed the payment of obligations which arose in old Yugoslav dinars before April 18, 1941, even if they had been transformed into kunas (occupation currency of Croatia), and which were unpaid at the date of publication of the law. (Certain obligations—salaries, pensions, alimony, rents—were to be provided for by special law.)

Analogous provisions are contained in Articles 10 and 11 of the Law Covering the Exchange Rates for the Withdrawal of Occupation Currency and the Settlement of Obligations in the Territory of Croatia, dated June 21, 1945 (Official Gazette No. 44 of June 26, 1945), and Articles 11 and 12 of the Law Covering the Exchange Rates for the Withdrawal of Lira Bonds and Occupation Currency, and Regarding the Settlement of Obligations in the Territory of the Italian Lira, German Mark and Pengoe (Slovenia), dated June 21, 1945 (Official Gazette No. 44 of June 26, 1945).

These laws distinguished between obligations incurred prior to the German occupation and those incurred subsequent to such occupation. Exchange rates were established for the occupation currency and for the settlement of obligations which arose subsequent to April 18, 1941, the date of surrender of Yugoslavia to the Germans and the Italians.

It was not until November 13, 1945 that the Government of Yugoslavia, by the Law on the Settlement of the Pre-War Obligations (*supra*), provided for the settlement of prewar obligations, i.e., those incurred prior to April 18, 1941, in terms of the old Yugoslav dinar.

Article 1 provided that "Obligations which have arisen in old Yugoslav dinars up to April 18, 1941, unless they were settled before the publication of this law, shall be settled at the rate of 10 (ten) old Yugoslav dinars to 1 (one) dinar of Democratic Federated Yugoslavia."

By Article 2, certain favorable exceptions were made in the case of small savings bankbook accounts, which were settled according to a graduated scale up to and including deposits in the amount of 20,000 old Yugoslav dinars. For example, deposits not exceeding 2,000 old dinars were settled at the rate of two old dinars for one new dinar; deposits from 2,000 old dinars, but not exceeding 5,000 old dinars, were settled at the rate of five old to one new dinar; and deposits from 5,000 old dinars, but not exceeding 20,000 old dinars, were settled at the rate of seven old for one new dinar. Pensions were settled in new dinars in relation to the postwar rules prescribed by the state; alimony payments under court decrees in old dinars were to be continued at the

same amount in new dinars; life insurance obligations were settled by pooling and revalorizing the assets and liabilities of the companies in conformity with valorization and other decrees of the government; and other prewar obligations were settled under other laws.

Claimants' deposit was made in prewar dinars; the obligation of the bank was to pay, under its rules and the terms of the deposit agreement, upon the demand of the claimant, in whatever medium was legal tender. The dinar was the legal tender at the time the deposit was made. An ordinary bank deposit is a debt, i.e., an obligation to be discharged in money, and at the same time a chose in action.

If money depreciates (loses its purchasing power) or is devalued (a lower ratio between gold and the monetary unit), a creditor does not have a right to more of the money unit (dinar) than he was entitled to prior to the depreciation or devaluation. As Mr. Justice Holmes said, "In effect a dollar or a mark may have different values at different times. But to the law that establishes it, it is always the same." (*Die Deutsche Bank, Filiale Nurnberg v. Humphrey*, 272 U.S. 517, 519 (1926).)

On April 6, 1941 the German forces invaded Yugoslavia; on April 18, 1941 the Yugoslav army capitulated and, immediately thereafter, the country was partitioned into three "states."

By the end of 1944 the Yugoslav Government returned to power, and in April 1945 the dinar of the Democratic Federated Republic was established as legal tender. The occupation currency was called in, according to established exchange rates. For example, the exchange of occupation currency in the Territory of Croatia was effected by turning in 1,000 kunas for 7 DFY dinars; 100 lire for 30 DFY dinars; and 100 pengos for 100 DFY dinars. Debts incurred during the occupation were generally settled according to the exchange rates established for occupation currency.

The occupying authority had the power to make occupation currency legal tender for the discharge of debts incurred during or before the occupation. Courts of the reacquiring Sovereign have held that payment in occupation currency discharged a prewar debt. (Nussbaum, *Money in the Law, National and International* 499: *Haw Pia v. The China Banking Corporation*, 4 Decision (Law Journal) 274—1948—Decision of the Supreme Court of the Philippines, April 9, 1948, *contra*, a decision of the High Court of Judicature at Rangoon, Burma, cited by Nussbaum at 499.) The *Haw Pia* case involved the payment of a pre-occupation debt in Japanese occupation currency.

During the occupation of Yugoslavia the deposit of the claimants remained an obligation of the bank.

Residents of Yugoslavia during the occupation could have received payment of their prewar bank deposits in occupation currency, which payment, as has been noted, would have discharged the debt. But claimants did not receive payment. Then the Yugoslav Government, in creating its monetary system following the occupation, told the debtors of Yugoslavia how much of the new money had to be paid in discharge of "old" debts (*Id.* at 144). This has been termed "revaluation," which is defined as being "the recasting of debts incurred in the former unit . . . designed to restore, in part or in entirety, the original financial value of the debt, impaired or destroyed by inflation." (*Id.* at 204.)

Yugoslav currency was not "ruined" and inflation thereof was not "catastrophic." An increase in the note circulation from 7.3 billion dinars (1939) to 14.6 billion at the beginning of the German invasion, and then to the equivalent of some 292 billion old dinars in 1945 does not evidence a "ruined" currency or "catastrophic" inflation.

Our own country abrogated contracts providing for payment in gold coin (the typical clause), or in the more elaborate clause "to pay . . . dollars in gold coin of the United States of (or frequently "or equal to") the standard of weight and fineness existing in"

By the joint resolution of June 5, 1933, Congress declared contracts (private) permitting the obligees of bonds to demand payment in gold or in United States money measured in gold against public policy, in order to restore a uniform currency and to nullify so-called gold clauses which would have dislocated the domestic economy by requiring debtors under these clauses to pay \$1.69 in currency while receiving taxes, rates, charges, and prices on the basis of \$1.00 of currency. A new currency basis for the dollar was established by the President on January 31, 1934, whereby the weight of the gold dollar was fixed at 15.5 21 grains as against former standards of 25.8 10 grains. In *Norman v. B. & O. Railroad*, 294 U.S. 240 (1935), the Supreme Court of the United States decided that payment in gold coin as required by a bond issued by the railroad interfered with the monetary powers of Congress and could not be permitted. The contention of Norman was that the resolution interfered with contract and property rights of the Fifth Amendment. The court held that contracts dealing with subject matter (money) within the power of Congress were made with the full knowledge of Congress's power and had a "congenital infirmity" which the parties could

not remove from the reach of the power of Congress by making contracts about them.

From what has been said it is evident that Yugoslavia violated no principle of international law in providing, as part of the re-establishment of its monetary system, for the payment of obligations incurred prior to military occupation at a rate of ten old dinars to one new dinar, and that the operations of the Yugoslav Law on the Settlement of Pre-War Obligations did not constitute a "nationalization" or "taking" of property within the meaning of the Yugoslav Claims Agreement of 1948.

We next direct our attention to the question, was the reduced bank account nationalized or otherwise taken by the various laws or decrees of Yugoslavia nationalizing and liquidating banks?

By a decree of June 17, 1946, Regarding the Revision of Licenses and Liquidation of Private Credit Enterprises, private banks which had not obtained new licenses from the Ministry of Finance of Yugoslavia were to be liquidated, and those already in liquidation or those the further activity of which had been prohibited by the Minister of Finance of Yugoslavia, were also to be liquidated (Article 2, paragraph 1).

Paragraph 3 of Article 2 of the decree provided that no bankruptcy proceedings should be instituted if the obligations of the private bank exceeded its assets and, if so, the liquidation of such bank was to be continued under the provisions of the decree and pursuant to regulations to be issued thereunder.

Article 5 of the decree provided as follows:

(1) The satisfaction of unsecured creditors should be effected in the following order:

1. Expenses for administration, maintenance, realization of assets and distribution of the same.

2. Public charges, accrued during the liquidation and five years before the beginning of the liquidation.

3. Wages and other salaries of persons in the service of the credit enterprise during the last year before the beginning of the liquidation.

4. Deposits and insurance payments up to and including 5,000 dinars.

5. Claims of cooperatives.

6. All other obligations.

(2) Should the liquidation assets not suffice for the payment of all debts, the creditors of a senior priority should exclude the creditors of a junior priority, and creditors within the same priority rank should be satisfied in proportion to their claims.

About two months later a law, which had been in effect prior to the said decree, was republished as the Law Regarding the

Organization of the Credit System (Official Gazette No. 68 of August 23, 1946, Law No. 484). Under this law private banks, if licensed, could operate in Yugoslavia.

The law regarding the Nationalization of Private Economic Enterprises of December 5, 1946 (the first nationalization law) nationalized banking enterprises (Item 38, Article 1).

Consequently, after December 5, 1946 all private banks were either subject to continued liquidation procedure under the decree of June 17, 1946 or they had to be liquidated after being nationalized by the nationalization law of 1946.

It is the decree of June 17, 1946, as amended by the decree of November 5, 1947, which affected the *deposits* in private banks. The provisions of the nationalization law of December 5, 1946 did not apply to the liquidation of private banks which, as has been noted, was regulated by the decree of June 17, 1946, as amended.

This decree provided, *inter alia*, as follows:

In taking over all the assets the State assumes the payment of all the obligations of the private credit enterprise in liquidation, within the limits of the transferred assets.

From the cash of the private credit enterprises in liquidation the obligations taken over will be paid according to the priority under Article 5 of the Decree.

The obligations taken over which originate from savings accounts are wholly transferred to the National Bank of the FPRY *under the same conditions under which they were held with the liquidating credit enterprise, within the limits of the effective provisions*. For these obligations there will be issued to the depositors savings books of the National Bank of the FPRY. (Emphasis added.)

All the other obligations taken over but not paid in the above described manner, will be paid in Government Bonds payable to the bearer.

The due date and payment plan of these obligations, as well as the interest rate, will be determined later.

Pursuant to Article 10 of the decree of June 17, 1946, regulations were issued by the Minister of Finance regarding the liquidation of private banks. The first of these regulations was issued on July 11, 1946 (Official Gazette No. 47 of July 16, 1946). They were amended on December 5, 1946 (Official Gazette No. 102 of December 18, 1946) and on June 14, 1947 (Official Gazette No. 53 of June 24, 1947) and, finally, they were amended and republished on December 16, 1947 (Official Gazette No. 3 of January 10, 1948).

Prior to the amendment of November 5, 1947 to the decree of June 17, 1946, there was no regulation promulgated under this

decree which affected *bank accounts*, except that the decree of June 17, 1946 established an order of payment which gave a priority to small depositors.

Article 22 of the Regulations Regarding the Procedure of Liquidating Private Credit Enterprises (Official Gazette No. 3 of January 10, 1948) provided for the payment in cash of the obligations assumed by the Government of Yugoslavia under Article 11 of the Decree of June 17, 1946, as amended by the Decree of November 5, 1947, as follows: (N.B. As is noted above, Article 11 of the amendment of November 5, 1947 provided, *inter alia*, that the obligations of nationalized private banks were to be transferred to the National Bank within the limitation of existing regulations and savings books were to be issued to the depositors by the National Bank.)

1. Cash was to be used to pay creditors as set forth in Article 5 of the decree, which set up different categories regarding payment. Each category was entitled to full payment, if there were sufficient cash, before the creditors in the next category were paid.

2. Savings banks deposits were to be transferred to the National Bank in the amounts established in the final liquidation balance, for which new depositor savings books were to be issued under the same conditions as existed when the deposit was in a private bank. The deposits transferred to the National Bank were, in every respect, equal to the other deposits therein. Savings books were to be issued only after delivery of the savings book of the former private bank or after issuance of a court decree of cancellation of the savings book. The National Bank was obligated to the depositor in the amount specified at the time of transfer of the deposit to the National Bank.

3. Deposits of emigrants, which were held in the original form of currency (e.g., dollar accounts), were to be converted into dinars at the official rate at the date of conversion for the purpose of liquidation, and were to be reconverted at the same rate into the original foreign currency (i.e., into dollars). Savings books were to be issued by the National Bank to the owners of the old savings accounts.

The action of the said Government did not result in any loss to the depositors. If the bank were solvent, the depositors would be credited by the National Bank with the full amount of the deposit transferred to it. True it is that if the cash assets of a solvent bank were not sufficient to pay all of the creditors, payment would be made of the balance due in Government Bearer Bonds. But the decree of June 17, 1946, as amended by the decree of November 5,

1947, made an exception of savings accounts, which would be paid *in cash* by the National Bank after the deposits were transferred thereto.

To ensure that full payment should be made in cash, the regulations, effective January 10, 1948 (*supra*), provided that the difference between the amount of cash deposited by a particular solvent bank with the National Bank and the amount of the transferred deposits in the original bank should be charged to "the appropriate current account of the Ministry of Finance of the Federal People's Republic of Yugoslavia" (Article 22).

If the private bank were insolvent, then the extent of the loss to be suffered by the depositors would depend upon the financial condition of the insolvent bank and payment to the depositors was to be made according to Article 5 of the decree of June 17, 1946, as amended. Even if the bank were insolvent, the Government of Yugoslavia was liable for the bank's obligation up to the value of its assets (Article 5, Nationalization Law of December 5, 1946, and Article 11 of the decree of June 17, 1946, as amended).

Summarizing the foregoing discussion, we can conclude that the Yugoslav Government did not nationalize or take the bank deposits of private solvent banks but, instead, provided for their transfer to the National Bank to the credit of the depositors, which bank issued a bank book for the full amount due as determined by the liquidation proceedings. No loss has been suffered by such depositors, nor have they been damaged as a result of the action of Yugoslavia. No property, or right or interest with respect thereto, has been taken by Yugoslavia within the meaning of the Agreement. The private banks have been nationalized but, as has been noted, the deposits of solvent private banks will be, or have been, transferred to the National Bank. If a depositor in an insolvent bank receives the credit he is entitled to, depending upon the financial condition of the bank, he has suffered no loss.

What loss has the depositor of a private bank suffered by the fact that his deposit has been transferred to a National Bank? Such a deposit represents an obligation due, not by a private enterprise, but by the Government itself, which owns the National Bank of Yugoslavia. By Article 22 (2) of the regulations, effective January 10, 1948 (*supra*), deposits in the National Bank are held by it under the same terms as the original deposits were held (i.e., provisions with original bank regarding payment, interest, etc.), within the limits of the effective provisions of law (i.e., to the extent of bank's solvency). The deposits transferred to the National Bank are, in every respect, equalized with the

other deposits with the National Bank (i.e., no discrimination against new accounts).

So, whatever right the depositor had under the original deposit he has under the new deposit with the National Bank. In this connection, Article 22 of the National Bank Act of June 17, 1931 (Official Gazette No. 137 of June 20, 1931), which provided that the National Bank is subject to the jurisdiction of the regular courts, has been upheld as valid by the decree of January 15, 1946 (Official Gazette No. 6 of January 18, 1946). The basic law of State Economic Enterprises of July 24, 1946 (Official Gazette No. 62 of August 2, 1946) provides that such enterprises are responsible for their obligations to the extent of the property they have received to administer.

The foregoing clearly shows that Yugoslavia did not "nationalize" or "take" the reduced (so-called 10 percent) deposit. To conclude otherwise would be to distort the meaning of Article 11 of the Agreement. This article refers to "deposits *in* banks and other similar forms of capital . . ." It does not refer to deposits *to be* placed in banks at some time subsequent to the nationalization or liquidating decree or to the execution of the Agreement.

The Commission has carefully reviewed the negotiations leading up to the Agreement of 1948, and it is satisfied with its conclusion that claims based upon a reduced bank account were not among those espoused by the United States nor included in the claims settled and discharged by the Agreement.

The claim is denied in whole.

Dated at Washington, D.C.

June 3, 1952.

Monetary reform.—In reaching its conclusion concerning monetary reform laws in Yugoslavia, the Commission relied upon the generally accepted principle of international law that a state is inherently authorized to regulate its own currency. (V Hackworth, Digest of International Law 633 (1943).) The Commission also took into consideration the settled rule that currency depreciation as a result of war does not, in and of itself, impose international liability. (Ralston, Supplement to 1926 Revised Edition of the Law and Procedure of International Tribunals 183.)

Accordingly, a claim made for losses resulting from the conversion of 620,000 Croatian *kunas* to Yugoslavian dinars at the rate of 7 dinars per 1,000 *kunas* was denied for failure to establish a "taking" of claimant's property by Yugoslavia. (*Claim of Joseph Winkler*, Docket No. Y-1465, Dec. No. Y-1134.)

Similarly, the conversion of 150,000 "occupation" or "Serb" dinars on deposit with a bank in Yugoslavia since May 16, 1942, to "new" dinars at the rate of 5 "new" dinars for each 100 "Serb" dinars under Article 3 of the Law of April 5, 1945, on Currency Exchange Rates for the Withdrawal of Occupation Currency and for the Settlement of Obligations (Official Gazette No. 23, April 19, 1945) was held not to constitute a "taking" of claimant's property. However, an award was made to this claimant for the "new" dinars which were confiscated on February 6, 1945, pursuant to the Enemy Property Law of November 21, 1944. (*Claim of Stefan Anton Johsz*, Docket No. Y-1587, Dec. No. Y-1420.)

Generally, bank notes on hand become worthless when monetary reform laws abolish old currency and establish new legal tender. A claim was presented in which claimant had acquired in Switzerland 40,000 dinars in bank notes issued in 1940. The claim was denied for the reason that Yugoslavia did not nationalize or take the bank notes of the former Kingdom of Yugoslavia, but merely enacted certain measures on currency matters which did not give rise to claims within the terms of the Agreement and the 1949 Act. In the concurring opinion of one of the Commissioners, it was stated that claimant's right to use the currency was lost in 1941 when the legal tender value in Yugoslavia of all prewar currency was destroyed by the enemy. (*Claim of Alfred M. Stumer*, Docket No. Y-594, Dec. No. Y-386.) A discussion of other claims arising from action during World War II, which were likewise denied, is found in the *Claim of Lucie C. Rosenberg*, at page 137.

Devaluation of currency.—As a general rule, claims based on bank deposits were denied for the reason that the devaluation of Yugoslav currency did not constitute a "nationalization or other taking" of property. However, a claim for a bank account was allowed on the basis of evidence establishing that claimant's 10,000 dinars on deposit with a bank in Yugoslavia was "taken" by Yugoslavia on February 6, 1945, under the Enemy Property Law of November 21, 1944. (*Claim of Franz B. Schick, et al.*, Docket No. Y-315, Dec. No. Y-1439.) The amount of the award was measured by the value of the deposits on February 6, 1945, the date of loss, an issue appearing in the *Claim of Joseph Senser*, at page 149. The Law of October 27, 1945 on Settlement of Prewar Obligations (Official Gazette No. 88, November 13, 1945), which devalued prewar obligations, was urged by Yugoslavia as the basis for reducing claimant's award. That contention was found to be without merit because the devaluation law became effective subsequent to February 6, 1945, when claimant's deposits were taken. (*Ibid.*, Final Decision.)

Bank deposits.—As indicated in the decision on this claim, Yugoslavia did not nationalize or take bank deposits in private banks but, instead, provided for their transfer to the National Bank where the depositors were credited with the full amounts due. Therefore, no loss was sustained by such depositors, nor were they damaged in any way as a result of the action by Yugoslavia.

A claimant was denied recovery for losses with respect to bank

deposits because his losses resulted from depreciation of currency, following the general rule stated above. The interesting element in that claim was that his bank deposits arose from the sale of his stock interests in a Yugoslav corporation without his knowledge or consent, and the deposit of the proceeds in a bank to his credit. Since the amount deposited was adequate compensation, the Commission held that he had sustained no loss. Unfortunately, the subsequent devaluation of the deposits was likewise no basis for an award under international law. (*Claim of Hans H. Kohler*, Docket No. Y-526, Dec. No. Y-316-A.)

In another claim, a bank in which claimant owned shares of stock converted in April 1941 a large part of its pre-World War II assets into occupation currency at par from dinar into *kuna*. Following severe inflation during the occupation and upon the liberation of Yugoslavia, the conversion of the occupation currency was effected in June 1945 at the rate of 7 dinars per 1,000 *kunas*, and pre-World War II obligations were converted at the rate of 10 to 1. These currency transactions caused the bank to suffer great losses. Yugoslavia did not nationalize the bank because it was insolvent, but the bank was liquidated. Accordingly, the shares of stock had no value and the claim was denied for the reason that the loss resulted from war, currency fluctuations, depressions and other causes or forces which Yugoslavia could neither prevent nor control. (*Claim of Adelaide V. Duncan, et al.*, Docket No. Y-310, Dec. No. Y-1158.)

In the Matter of the Claim of

Docket No. Y-1090
Decision No. Y-1307

LUCIE C. ROSENBERG

Against the Government of Yugoslavia

In absence of evidence that decree of a Yugoslav court was invalid, Commission will give it full faith and credit, and will not permit collateral attack on decree in determining claims under Yugoslav Claims Agreement of 1948 and Section 4(a), Title I of the 1949 Act.

Taking of property by puppet State of Croatia did not constitute a taking by Yugoslavia under Section 4(a). War damage claims arising during World War II denied under Section 4(a) because such claims were not covered by the Agreement.

Evidence contained in related claims considered in making determinations pursuant to Commission procedures. Claim denied in part for failure to sustain burden of proof.

PROPOSED DECISION

This is a claim for \$130,497.97 by Lucie C. Rosenberg, a citizen of the United States since her naturalization on July 25, 1946, and is for the taking by the Government of Yugoslavia of real

property located in Zagreb and Osijek, and valued at \$120,000; personal property located in Zagreb, and valued at \$7,876; and a one-half interest in a mortgage on real property located in Zagreb, valued at \$2,300.

Claimant alleges that Miroslav Frankl was the brother of her mother's foster mother and that, on information and belief, in November or December, 1940, Miroslav Frankl made his last will and testament which was drawn up by one Dr. Alexander Licht, now deceased. Claimant further alleges that since Miroslav Frankl had no children, he bequeathed to her and to her brother, Mario Sorell (Sternberg), all of the real property involved in the claim, subject to a life estate in favor of his wife, Klara Frankl. Miroslav Frankl died on March 11, 1944, and claimant alleges that her brother, Mario Sorell, was killed on July 9, 1944. Claimant also alleges that her father, Manfred Sternberg, and her mother, Lilly Sternberg, relinquished and abandoned any rights they might have had as Mario Sorell's parents in favor of claimant upon being advised in 1950 by Klara Frankl of the terms of the aforementioned will of Miroslav Frankl.

Claimant has filed the affidavit of Klara Frankl, who swears that in 1938 Miroslav Frankl executed his will, leaving to his grandnephew, Mario Sorell, and his grandniece, the claimant, all of his real estate, subject to a life estate in favor of the affiant. She also swears that the will was witnessed by Otto Wachslar and Felix Berger, and that it was lost, as it was either left behind when she and her deceased husband fled Zagreb, or was lost later in Cantu, Italy. Claimant has also filed the affidavits of Otto Wachslar and Felix Berger, who confirm the execution of such a will and their witnessing it.

The Yugoslav Government has filed a certified copy of a decree of inheritance issued by the County Court for Precincts II and III, Zagreb, dated March 23, 1948, with respect to the estate of Miroslav Frankl, deceased. This decree awards the real property of the decedent (Docket No. 11288, Zagreb, and Nos. 1295, 1392 and 1393, Osijek), to the decedent's widow, Klara Frankl, who is stated to be represented by her attorney, Dr. Oscar Fisher of Zagreb. Permission is granted for recordation in her name "with a notation forbidding right of alienation to all these properties until the said Klara Frankl returns to Yugoslavia and the simultaneous notation of the right of the Government of the F.P.R.Y. to manage those properties until her return to Yugoslavia."

Instead of attempting the re-execution of the will in proceedings before the Yugoslav court having jurisdiction, the claimant has adopted the course of attempting to do so before this Commission. However, in the absence of any showing that the County

Court of Zagreb lacked jurisdiction or that the decree was otherwise invalid, we shall not give effect to a collateral attack on the decree and shall allow it full faith and credit. Accordingly, the claimant has not proved that she was the owner of any real property which was taken by the Government of Yugoslavia and the claim for such property is denied.

With respect to the personal property, claimant alleges that it was last located on the premises of her mother, Lilly Sternberg, at Jelacic Trg. 15, Zagreb. Claimant alleges this property was confiscated in 1941 by the Chief of the Zagreb Police under the authority of the Ustasi, but was later restored to claimant by the present Yugoslav Government, and that that Government "took it" as of July 19, 1948. In this connection, it is noted that in the claim filed by claimant's father, Manfred Sternberg (Docket No. Y-1092), he states with respect to his own personal property located at Jelacic Trg. No. 15: "In 1941 the Chief of the Ustasi Police by the name of Cerovsky, drove up with police trucks and took away *everything*." (Claimant's emphasis.) Also, in the claim of claimant's mother, Lilly Sternberg (Docket No. Y-1091) the latter has filed the affidavits of Klara Frankl and Felix Sorell confirming the taking of Mrs. Sternberg's personal property by the Ustasi.

The Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia settled claims for the "nationalization and other taking by Yugoslavia of property" (Article 1). The "Ustasi" referred to was the militia of the puppet State of Croatia, and we have held that the taking of property by that State, and damage to property while under its control and administration, are not compensable under the Agreement (Decision No. 993, *In the Matter of the Claim of Socony-Vacuum Oil Company, Inc.*, Docket No. Y-304). Furthermore, even if a taking of property by the State of Croatia were to be considered a taking by the Government of Yugoslavia, claimant was not at such time a national of the United States, and her claim would therefore not be within the jurisdiction of this Commission.

As to the taking of the personal property by the present Government of Yugoslavia, claimant has submitted no supporting evidence whatsoever in this regard. The Yugoslav Government reports that such property was "entirely plundered and carried off, by the occupator" and this Commission's investigator reports that local public officials stated that the personal property was taken by the Ustasi. Claimant has not shown that the personal property was taken by the Government of Yugoslavia and the claim therefor is denied.

As to the claim for a one-half interest in a mortgage, the Com-

mission finds it established by a certified extract from the Land Register of the County Court of Zagreb (Docket No. 49235 Zagreb), filed by the Government of Yugoslavia, and admissions of that Government, that claimant and Mario Sternberg (Sorell) owned a mortgage in the amount of 230,000 dinars with 8% interest per annum on real property consisting of 2 parcels of land with an area of 3577 square meters, with structures on the parcels, and that the real property and the mortgage on the real property were nationalized on April 28, 1948, pursuant to the Nationalization Law of April 28, 1948 (Official Gazette No. 35 of April 29, 1948).

The Commission is of the opinion, on the basis of all evidence and data before it, that a claim has been established for \$3,240.91 as the value of claimant's interest in the mortgage.

AWARD

On the above evidence and grounds, this claim is allowed to the extent indicated, and an award is hereby made to Lucie C. Rosenberg, claimant, in the amount of \$3,240.91 with interest thereon at 6% per annum from April 28, 1948, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$61.27.

Dated at Washington, D.C.
September 27, 1954.

FINAL DECISION

A Proposed Decision was entered in this claim in which an award was made to Lucie C. Rosenberg, claimant, in the amount of \$3,240.91 plus \$61.27 interest. Subsequent to the issuance of the Proposed Decision the Government of Yugoslavia filed a brief, as *amicus curiae*. While the claimant filed no objections, she petitioned the Commission to amend the claim by adding a claim for a one-half interest in a mortgage recorded under Docket No. 6264, Zagreb.

A certified extract from the Land Register of the County Court of Zagreb (Docket No. 6264, Cadastral District of Zagreb) which was filed in a related claim (Docket No. Y-1092) does show an encumbrance in the amount of 200,000 dinars in favor of Mario and Lucie Sternberg. However, that extract also shows that it had been cancelled both under this docket number and also in the "main entry" under Docket No. 3502, Zagreb. Its cancellation is further confirmed by an extract furnished by the Yugoslav Gov-

ernment which shows the cancellation of this mortgage entry. The claim with respect to this mortgage is, therefore, denied.

Thirty days having elapsed since the claimant herein and the Government of Yugoslavia were notified of the Commission's Proposed Decision on the above claim, and the brief filed by the Yugoslav Government having received due consideration, the Commission hereby adopts such Proposed Decision as its Final Decision on the claim.

Dated at Washington, D.C.

December 8, 1954.

Full faith and credit.—Pursuant to Article IV, Section 1, of the Constitution of the United States, "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." However, the same rule does not apply with respect to judgments of foreign countries. Here, the so-called "comity" rule or "reciprocity" rule applies. Generally, this means that the judgments of one nation will be honored by another nation pursuant to an agreement between the two nations. Nevertheless, as one authority noted, "In the case of a foreign judgment, there is no principle of law, either municipal or international, that commands that extraterritorial effect be given to such foreign judgment. Although usually it is stated that the enforcement of foreign judgments is based upon 'comity,' it is perfectly clear that any enforcement of such judgments is not obligatory." (Re, Foreign Confiscations in Anglo-American Law 59-60 (1951).)

As indicated in the *Rosenberg* decision, the Commission stated "in the absence of any showing that the County Court of Zagreb lacked jurisdiction or that the decree was otherwise invalid, we shall not give effect to a collateral attack on the decree and shall allow it full faith and credit."

Thus, where a decree of inheritance issued by a County Court in Yugoslavia stated that a one-fourth interest in certain real property escheated to the State, the Commission found no basis for questioning the validity or effectiveness of the decree. The Commission noted that claimants had filed no evidence indicating a denial of justice, as that term is generally understood in international law, or that the decree was obtained by irregular means, or that it was clearly erroneous. (*Claim of Milan Freund, et al.*, Docket No. Y-1670, Dec. No. Y-1486.)

Similarly, where claimant's husband was shot and his property confiscated by Yugoslavia pursuant to a sentence of a military court, the Commission upheld the foreign court's findings that the husband's property passed during his lifetime to the State by virtue of the military sentence and that claimant did not succeed to any of it. The Commission stated that it would not question the

laws or court proceedings of Yugoslavia in the absence of evidence that such laws and procedures were not followed, or that they did not measure up to international standards of justice. (*Claim of Josephine Prsle*, Docket No. Y-513, Dec. No. Y-1518.)

The Commission's rulings were in accord with the statutory direction that claims be determined pursuant to "applicable principles of international law, justice, and equity." (Section 4(a) of the 1949 Act.)

Effect of takings by a puppet government.—This issue is related to the one concerning the taking of property by a government other than Yugoslavia, discussed in the *Claim of John Grisan*, appearing at page 106. That claim involved the taking of property in an area that was not under the jurisdiction of Yugoslavia on the date of taking, but which area subsequently was incorporated into Yugoslavia.

The question presented here was whether the loss of property in Yugoslavia as a result of action by a so-called "puppet" government constituted a taking of property by Yugoslavia. Pursuant to the Yugoslav Claims Agreement of 1948, only claims of nationals of the United States for the nationalization or other taking of property *by Yugoslavia* were covered.

During World War II, the Yugoslav Government was in exile in London, England, and certain factions and military forces in Yugoslavia purported to exercise sovereign jurisdiction. The Kingdom of Croatia was established by occupation forces, and was dominated by the Axis Powers. After Yugoslavia was re-established as the sovereign, it nullified all decrees issued during the occupation of Yugoslavia. The Commission recognized the Yugoslav Government-in-Exile as the legitimate government of Yugoslavia, and under established principles of international law, the actions of the Kingdom of Croatia were deemed null and void. The illegal dispossession of property during the war is discussed in the *Claim of Mile Smiljanic, et al.*, appearing at page 88.

Upon careful consideration of this matter, the Commission concluded that the legitimate government of Yugoslavia, which returned to power after the cessation of hostilities, could not be held responsible for the actions of the Kingdom of Croatia because Croatia was not, as a matter of law, a predecessor of Yugoslavia. (*Claim of Zora Kocich Popp*, Docket No. Y-280, Dec. No. Y-188.) Although the Yugoslav Government-in-Exile recognized Croatia as having *de facto* control over a large part of Yugoslavia, Croatia could not be considered in any sense as the legitimate government of Yugoslavia. Moreover, while real property in Yugoslavia could be restored to the lawful owners after the war, there was no way of restoring personal property that had been lost or destroyed during the war. This question of war damages is discussed hereafter. In any event, all claims for property losses attributable to Croatia were denied. (*Claim of Socony-Vacuum Oil Company, Inc.*, Docket No. Y-304, Dec. No. Y-993.) The government of Serbia, also established as a "puppet" government during the war, was held not to have been a predecessor to the legitimate government of Yugoslavia. (*Claim of George H. Schellens*, Docket No. Y-493, Dec. No. Y-1306.)

Since the Agreement covered only certain claims for the nationalization or other taking of property, claims for internment, forced labor, and personal injuries were denied. (*Claim of John Dusan Versic*, Docket No. Y-1531, Dec. No. Y-495.)

War damages.—The Yugoslav Claims Agreement of 1948 is silent as to claims for war damage to property which was nationalized or otherwise taken by Yugoslavia. The general rule in international law is that private individuals are owed no compensation on account of injuries caused by legitimate military activities. Although recognizing the principle of war damage compensation in Article 7 of the Agreement, Yugoslavia did not enact legislation to compensate for war damages, but merely provided for the registration of war damage claims for the purpose of compiling a record as a basis for exacting reparations from its recent enemies under reparations provisions of World War II peace treaties. An examination of the background and history of the negotiations which resulted in the conclusion of the Yugoslav Claims Agreement of 1948 showed that the negotiators did not intend that compensation for war damage should be paid out of the fund established by that agreement.

Accordingly, claims for war damages were denied. Where a claim involved the taking of real property that had been damaged or partially destroyed from war activities, the award was measured by the value of the property in its damaged condition on the date of taking. (*Claim of Mary Lukan*, Docket No. Y-334, Dec. No. Y-459.) This procedure followed the rule established in the *Claim of Joseph Senser*, appearing at page 149.

A schooner that was sunk during World War II was the subject of a claim for the taking of its hull, motor and undamaged equipment after it had been raised. Not only was the claim for war damages denied, but no award was made for the taking of the raised schooner by Yugoslavia because claimant was not a national of the United States on the date of such taking. (*Claim of Joseph Skropanich*, Docket No. Y-1788, Dec. No. Y-1068.)

Claims for property losses resulting from actions of Hungarian occupation authorities, and from pilfering and looting by other military forces in Yugoslavia, were denied. (*Claim of Jacob Ulrich*, Docket No. Y-1289, Dec. No. Y-1016; *Claim of John S. Stewart*, Docket No. Y-1049, Dec. No. Y-1133.)

Evidence—Burden of proof.—It will be observed in the notes to the *Claim of Joseph Senser*, appearing at page 150, that claimants were not prejudiced by recitals of the amounts of their claims or the extent of their ownership interests if the evidence supported more favorable determinations. Although the Commission assisted claimants in documenting their claims by obtaining reports from its Field Office in Belgrade, Yugoslavia, the basic rule was that the burden of proof with respect to every element of a claim rested upon the claimant, pursuant to Section 531.6 (d) of the Commission's Regulations.

In a claim for personal property situated in real property that had been taken by Yugoslavia, the Commission's Field Office reported that all of the personal property had been removed by a person who had occupied the premises. Accordingly, the claim for personal property was denied because claimant failed to sus-

tain the burden of proving that the property had been taken by Yugoslavia. (*Claim of Barbara Herniach*, Docket No. Y-380, Dec. No. Y-946.) A claim in which the claimed property was neither described nor otherwise identified, and which failed to indicate either the extent of claimant's interest, or the date or manner of taking, was denied for lack of proof. (*Claim of Dan (Dusan) Drakulich*, Docket No. Y-1524, Dec. No. Y-404.)

An interesting question of proof was presented in a claim for a maritime lien. The Commission cited authorities in ruling that a maritime lien against a vessel is acquired when a special agent, acting in a particular port for a particular voyage, advances funds to the master of the vessel, relying on the credit of the vessel itself. The claim was denied for failure of proof. (*Claim of Simpson, Spence & Young*, Docket No. Y-1695, Dec. No. Y-447.) Initially, this claim had been denied because it appeared to be an unsecured creditor's claim, an issue discussed in the *Claim of Virginia Howard*, appearing at page 115. Related issues, such as pledgees' rights (*Claim of Anny Aczel*), and mortgagees' rights (*Claim of Manfred Sternberg*), appear at pages 83 and 62, respectively.

As indicated in the *Rosenberg* decision, it was the practice of the Commission to consider related claims simultaneously. Frequently, evidence in one claim aided in determining other claims involving the same or similar property, or the same claimants.

Reverter clause.—Pursuant to the provisions of Article 1(c) of the Agreement, any excess remaining from the \$17 million fund after payment of all valid claims and the costs of adjudication was to revert to Yugoslavia. Upon completion of the Yugoslav claims program, it was found that the funds were insufficient to pay the principal amounts of all awards in full. (See statistics on page 11.)

In an effort to protect Yugoslavia's interests in this respect, Yugoslavia agreed to furnish the Commission with pertinent information relating to the claims covered by the Agreement (Article 9(a)), and the United States agreed to submit to Yugoslavia certified copies of all claims filed with the Commission (Article 9(b)). Moreover, Yugoslavia had the right to "file briefs as *amicus curiae* with respect to any specific claims." (*Ibid.*) Such briefs were considered by the Commission in determinations of claims against Yugoslavia. (*Claim of Magdalena Maus*, Docket No. Y-787, Dec. No. Y-591, Final Decision.)

Proper parties claimant.—Court-appointed receivers of dissolved corporations were recognized as proper parties claimant. (*Claim of John A. Zetina, Receiver*, appearing at page 90.) Since the same procedures were applicable to claims against Panama, receivers of corporations that had been dissolved for nonpayment of taxes were recognized. (*Claim of Panama Land and Timber Company*, Docket No. PAN-40, Dec. No. PAN-67.)

In appropriate cases, awards were granted to administrators or executors of estates. (*Claim of Joseph Kovacs as Administrator of the Estate of Katherine Kovacs, Deceased*, Docket No. Y-1105, Dec. No. Y-1293; *Claim of the U. S. National Bank of Portland, Oregon, as Executor of the Estate and Trustee under the Will of Stephen G. Talia, Deceased*, Docket No. Y-1627, Dec.

No. Y-1348.) A duly authorized attorney-in-fact was also recognized as the proper party claimant (*Claim of Charles Edward Learitt*, Docket No. PAN-67, Dec. No. PAN-26); as was the qualified guardian of a minor (*Claim of Henry Frey, Jr., et al.*, Docket No. PAN-22, Dec. No. PAN-31).

However, if an administrator died after his appointment by the court and no substitute was selected, the award was made to the Estate directly in order to preserve the rights and interests of those who might eventually be entitled to collect such award. (*Claim of the Estate of Lena Liese, Deceased*, Docket No. Y-1227, Dec. No. Y-1436.)

Where final distribution of an estate had been ordered by a court of competent jurisdiction, the award was granted to the distributees directly. (*Claim of Lester Clark, et al.*, Docket No. PAN-6, Dec. No. PAN-21.) If an estate was not administered and proof of intestate succession was established, the heirs were granted awards. (*Claim of Meredith A. Finger, et al.*, Docket No. PAN-48, Dec. No. PAN-57.)

Attorneys' fees.—Section 4(f), Title I of the 1949 Act contained an unusual provision which conferred discretionary authority upon the Commission to “determine and apportion the just and reasonable attorney’s fees for services rendered” with respect to any claim filed under the statute, provided that “the total amount of the fees so determined in any case shall not exceed 10 per centum of the total amount paid pursuant to the award.”

As will be noted from an examination of subsequent amendments to the 1949 Act, namely, Titles III, IV and V, appearing at pages 716, 721 and 725, this provision was changed by the Congress by withdrawing the authority to determine and apportion an attorney’s fees, except under Title III of the 1949 Act, which provided that the Commission may authorize attorney’s fees in excess of the statutory maximum on the basis of a petition establishing “special circumstances of unusual hardship.” But the authority to apportion such fees and grant separate awards to attorneys was not carried over, and was confined only to claims within the purview of Title I of the 1949 Act, which governed claims against Yugoslavia and Panama.

Generally, the Commission exercised its discretion to determine and apportion an attorney’s fees in a case in which there was a duly authorized attorney of record, and when a copy of the agreement with claimant was submitted. Pursuant to Section 4(f), written evidence that the amount of the attorney’s fees had been agreed upon was “conclusive upon the Commission,” provided the fees did not exceed the statutory maximum. In such cases, the Commission entered an award in favor of the attorney. (*Claim of Andrew Wagner*, Docket No. Y-554, Dec. No. Y-401.)

There were cases in which the Commission declined to exercise its discretion with respect to attorneys’ fees. In one instance involving a claim against Panama, the written request for apportionment was made by claimant, rather than his attorneys. It appeared that the attorneys had neither communicated with nor appeared before the Commission with respect to that claim. Pursuant to the Commission’s Regulations, then in effect, an

attorney representing a claimant was required to file a power of attorney authorizing him to act on behalf of the claimant. It will be observed that the Commission's Regulations no longer include that requirement. The record in that case indicated that a retainer agreement had been executed in 1932, long before the Panamanian Claims Convention of 1950 was concluded. Moreover, the retainer agreement provided for a fee well in excess of the 10% statutory maximum, and no power of attorney had been filed with the Commission. The request for determination and apportionment of attorneys' fees was denied because the attorneys had not filed authority to represent claimant before the Commission. Moreover, the Commission added that it would decline to exercise its discretion in this case in any event. The reason for this conclusion was the recognition that a determination of the fees would entail a decision as to what part of the fees represented services rendered before claims against Panama were authorized, and what part constituted "services rendered with respect to such claim" before the Commission. (*Claim of David A. West*, Docket No. PAN-10, Dec. No. PAN-58.)

In the Matter of the Claim of

Docket No. Y-1756
Decision No. Y-663

JOSEPH SENSER

Against the Government of Yugoslavia

Values prevailing in 1938 utilized as initial point of reference in determining awards under Yugoslav Claims Agreement of 1948 and Section 4(a), Title I of the 1949 Act because economic conditions then existing were stable and normal.

Exchange rate of Yugoslavian currency in 1938 determined to have been 44 dinars for \$1.00.

Awards under Section 4(a) for the taking of property increased by interest at rate of 6% per annum from dates the claims arose to August 21, 1948, date of payment by Yugoslavia pursuant to Yugoslav Claims Agreement of 1948.

FINAL DECISION

The Commission by Proposed Decision No. 663, issued March 31, 1954, made an award to the claimant herein of \$1,681.82, principal, and \$357.33, interest. Pursuant to Article 9 (b) of the Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia, and the Commission's rules, the Government of Yugoslavia has filed a brief as *amicus curiae* with respect to the Proposed Decision.

The objections of that Government are directed to: (1) the

possible use by the Commission in other claims of a date later than 1938 for the valuation of property, (2) the use of a 44 to 1 exchange ratio, and (3) the allowance of interest on awards. The dollar amount of the award in this claim is acceptable to the Government of Yugoslavia, even though in excess of that which it had previously recommended.

(1) Base Period for Valuations

Article 1 of the Agreement of July 19, 1948, provides for awards to nationals of the United States "on account of the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect to property, which occurred between September 1, 1939 and the date hereof" (July 19, 1948). Such property and property rights were, for the most part, taken by that Government on February 6, 1945 (Enemy Property Law of November 21, 1944; Official Gazette No. 2, February 6, 1945), on December 5, 1946 (Nationalization Law of December 5, 1946; Official Gazette No. 98, December 6, 1946), and on April 28, 1948 (Nationalization Law of April 28, 1948; Official Gazette No. 35, April 29, 1948). It would be customary to value property as of the date of taking. However, as explained in some detail in the Proposed Decision herein, the year 1938 has been proven, as a matter of historical and economic fact, to have been the last normal year before war on the continent unbalanced property and currency values to the point where the use of any later period of time, as a fixed touchstone in time for the evaluation of the bulk of the claims, would have been incorrect. For that reason, as amplified in the Proposed Decision, the finding was made that:

Accordingly, we believe it proper to consider 1938 valuations as the initial point of reference. This does not exclude consideration of later valuations, including particularly those reflecting values at the more precise time of nationalization or other taking. If any such later valuations are available, and can be translated correctly into dollars, they will be given consideration with all other available evidence. However, it is appropriate to point out, as discussed below, that the Commission now adopts a rate of conversion of dinars into dollars which, in large part, will compensate claimants for appreciation in the values of their properties between 1938 and the time of taking.

The Government of Yugoslavia agrees that valuations as of the year 1938 are proper. Its disagreement is directed to the possible acceptance by the Commission of a later date or subsequent period of time in other claims. We suggest that this objection is premature.

In none of the approximately 300 claims on which Proposed

Decisions have been issued since June 30, 1953 have we relied upon later valuations. We will not speculate now on the kinds of situations which, conceivably, might warrant acceptance of a date other than 1938. However, we do not believe that every valuation at a time later than 1938 would necessarily be incorrect. Hence, we do not wish to exclude the possibility that a situation may arise wherein a later valuation may be acceptable or be the only valuation available. Indeed, the Government of Yugoslavia in its brief refers to claims in which 1939 and 1940 valuations were employed by it: "Exceptionally only in cases when it was physically impossible to identify the property taken possession of, because it was distributed in many different places which could not be established, in our reports, as a practical solution, we submitted data from balances of 1939 and 1940, calculated logically, that the values of said balances would be refigured according to conforming free rate of exchange dollars of the respective year."

We readily agree that the exchange rate of 44 dinars to one United States dollar might be inappropriate for application to dinar valuations as of a year later than 1938. It was for that reason that the Commission qualified its decision by stating that: "If any such later valuations are available, and can be translated correctly into dollars, they will be given consideration with all other available evidence." We believe it will be time enough to consider the matter in greater detail if and when it arises. If it does, the Commission will give full and careful consideration to any views or data submitted by the Government of Yugoslavia as to the proper valuation and exchange rate.

The Government of Yugoslavia also takes exception to the last sentence of the quoted portion of the Proposed Decision with respect to compensation for appreciation in values. It has apparently made the unwarranted and unintended inference that the 44 to one exchange rate not only is lower than that which was in effect during 1938, but was selected as a means of according, by indirection, recognition to the war-time inflation of prices and values. The significance of the quoted statement of the Commission is twofold. First, under the stimulus of inflation, prices and values increased greatly during the war years in Yugoslavia, as well as in many other parts of the world. If it were feasible to use valuations and currency exchange ratios, as of the precise time of taking, with the elimination of war-time abnormalities and influences on prices and values, we believe that the resulting awards would be more favorable to claimants as a whole. This is so because normalcy in terms of economic levels is a relative term. That level which is acceptable as a reflection of normalcy against a background of world-wide depression is not the same as that

which emerges from the dynamics of a period of war. Second, most of the Commission's decisions prior to June 30, 1953 employed the conversion rate of 55 dinars to the dollar. By finding, as we did, that the conversion rate should be 44 dinars to the dollar, a point discussed below, the dollar amount of the award was automatically increased. But, that result followed from our analysis of statistical, financial, economic and other data and not from a desire to select a ratio more favorable to claimants. Having found that the lower exchange ratio was required by the objective standards employed, we simply pointed out to claimants its practical application; that is, to the extent that the 44 to one basis for converting dinars into dollars produced larger awards, claimants would have the satisfaction of realizing that the end result was as closely in accord with the applicable provisions of the Agreement and the principles of international law, justice and equity as the Commission was able to achieve.

(2) *Rate of Exchange*

The Government of Yugoslavia agrees that the official rate in 1938 was around 44 dinars to the dollar. However, it contends that in 1938 the bulk of foreign exchange transactions was made at the free market rate which varied between a low of 47.10 to a high of 67 dinars to the United States dollar or an average of 55 dinars to the dollar and that that average should be used by the Commission.

In support of its position the Government of Yugoslavia apparently relies upon rates at which the former Yugoslav Union Bank, Inc. sold United States dollars during 1938. These rates, per \$1, as given, are as follows:

| | <i>Dinars (lowest to highest rate)</i> | |
|-----------------|--|-------|
| January ----- | 47.20 | 52.75 |
| February ----- | 47.10 | 52.25 |
| March ----- | 47.20 | 52.25 |
| April ----- | 47.50 | 54.50 |
| May ----- | 47.70 | 53.75 |
| June ----- | 47.70 | 48.35 |
| July ----- | 47.50 | 48.60 |
| August ----- | 48.30 | 49.25 |
| September ----- | 49.00 | 51.00 |
| October ----- | 49.50 | 51.00 |
| November ----- | 50.30 | 55.00 |
| December ----- | 51.04 | 67.00 |

However, we do not know how many transactions were involved, whether other banks had similar experience, and so forth. Excluding the month of December, the average for the 11-month period becomes 48.09 dinars for the low and 51.70 dinars for the high, thus indicating quite clearly that the bulk of the transactions

was conducted at an average rate of *less* than 50 dinars to the United States dollar.

The Government of Yugoslavia has also submitted copies of correspondence from the Yugoslavia Union Bank, Inc. at Belgrade which embraces five letters of advice containing exchange rate quotations, and letters referring to eight transactions involving the total dollar sum of \$7,921.51. The quotations given in all of that correspondence, per one United States dollar, are as follows:

| 1938: | <i>Dinars</i> | | <i>Dinars</i> |
|----------------|---------------|-----------------|---------------|
| February ----- | 47.30 | September ----- | 43.91 |
| | 42.68 | | 49.50 |
| | 52.00 | | 49.75 |
| March ----- | 47.50 | October ----- | 50.00 |
| April ----- | 47.50 | November ----- | 51.25 |
| May ----- | 47.90 | | 54.00 |
| July ----- | 48.25 | December ----- | 56.06 |
| | | | 56.45 |
| | | | 67.00 |

The single transaction in December at 67 dinars per \$1, upon which the prior December tabulation of the bank apparently is based, involves the total dollar sum of \$1,950.90. It will be observed, however, that two transactions were at rates less than 44 to 1 and that the over-all average is about 50 dinars to the dollar.

The one additional piece of evidence submitted by the Government of Yugoslavia on the matter of 1938 exchange rates consists of an affidavit from two employees of the Yugoslav National Bank. Those affiants advise that, based upon the exchange rate for the English pound during 1938, the United States dollar rate "ranged from 48.415 Dinars to one U.S. dollar, as the lowest, respectively to 55.808 Dinars for one U.S. dollar, as the highest average rate in particular months of 1938."

In view of the limited circumstances in which the exchange rates were involved, we cannot accept the above-described evidence as conclusive as to the free market rate. However, if we did, and if we believed that a free market rate were applicable to 1938 valuations, we would have to accept a rate slightly under 50 to 1.

In considering the exchange rate problem, we did not hold the view, at the time the Proposed Decision was issued, and we do not now conclude, that all transactions during the year 1938 were effected at the 44 to 1 rate or even that the overwhelming number of all dealings were made on that basis. We specifically recognized and pointed out that the free market rate in effect during 1938 may have been higher than 44 to 1, although apparently less than 55 to 1; and that by May 1939, it amounted

to approximately 55 dinars to \$1. At the same time, it was also suggested that since the free market rate varied with supply and demand and was a negotiated rate, and as records, at least of substantial nature, of such transactions were not available, free market rates were not sufficiently reliable for the Commission's purposes.

It would serve no useful purpose to set forth again the statistical and other data which persuaded us that the 55 to 1 rate formerly employed in Commission decisions was erroneous in fact, and that a lower rate was in effect. The material submitted by the Government of Yugoslavia confirms our judgment that the rate, on any basis, was less than 55 to 1 and, therefore, required modification. We are not persuaded that the 44 to 1 rate selected is incorrect or, perhaps of greater importance, that any other rate between 44 and 55 dinars to \$1 is more defensible. True, a case of some kind can be made for a variety of rates. But such a platitude does not aid us in arriving at a required precise rate. We are mindful of our obligation, in a matter of this importance, to make as clear as we can the objective considerations which lead us to the ultimate conclusion. We believe we did so in the Proposed Decision. If it would serve a useful purpose, we would here add numerous statistical tables and other financial data which we have available and which we omitted from the Proposed Decision because of their corroborative, rather than novel, character. We have concluded, however, that any such additions would add bulk rather than illumination.

In simple essence, we consider as of greatest importance the fact that the official rate of exchange in 1938 was 44 dinars to one United States dollar. We also consider that even if, as stated by the Government of Yugoslavia "the Government was the only one who could make use of it, and that for vital supplies and of special importance (armaments, diplomatic representations, etc.)," the taking by that Government of property of United States nationals is also a matter of "special importance." Fundamental principles of international law, justice and equity, which we are directed by the International Claims Settlement Act to apply, compel us to conclude that if that Government had sought to acquire for its own use property and property rights of United States nationals in 1938, it would have been bound to deal on a 44 to 1 basis. Any lesser consideration would, it seems to us, have been confiscatory and discriminatory. These considerations, in addition to those set forth in the Proposed Decision herein, lead us to reaffirm the correctness of the exchange ratio of 44 dinars to one United States dollar.

(3) *Interest on Awards*

The Government of Yugoslavia is of the view that the allowance of interest on Commission awards is not contemplated by the Agreement and is inconsistent with the principles of international law. It also urges the Commission to take into account that the properties when taken were not productive and required the expenditure of funds before profits could be earned.

We do not believe the latter consideration bears upon the question. The Commission must consider the value of the property and property rights taken in arriving at the just amount of awards. Its value, in turn, depends upon its condition. The matter of interest does not arise until the award has been determined. Moreover, interest is not allowed as compensation for future profits or in recognition of any contingent factor relating to property values or productivity. It simply accords recognition, by way of reparation, for the loss of each claimant's use of the property from the time of taking to the date of payment by the Government of Yugoslavia of the lump sum of \$17,000,000.

With respect to the Agreement, the Government of Yugoslavia is of the view that the absence of explicit provisions for the allowance of interest precludes its award. Its objections, however, are not supported by reference to authorities in the field of international law. This leaves unchallenged the authorities cited in the Proposed Decision. One such citation is particularly appropriate in view of the general objection raised:

Arbitral tribunals have felt that it was not outside of their jurisdiction to award interest, even though the Convention by which they were set up made no mention of interest. Eagleton, *The Responsibility of States in International Law* 203-4.

To this and other writers on the subject may be added the following comment from Borchard, *The Diplomatic Protection of Citizens Abroad* 428:

Those commissions which have allowed interest have proceeded either under express authority of a protocol, or on the theory that "compensation" includes interest for the improper withholding of satisfaction, either by the failure to make prompt payment of money when due, or the wrongful detention of property.

Here, the property admittedly was wrongfully detained from the time of its taking until compensation to satisfy the wrong was provided. It is that period of time for which compensation, through the award of interest, is being provided.

Also in point on the subject of the award of interest are the following excerpts:

The United States-Mexican General Claims Commission, in

U.S.A. (Illinois Central R.R. Co.) v. United Mexican States, *Opinions of Commissioners* (1927) 187, at 189, stated:

Unfortunately the Convention of September 8, 1923, contains no specific stipulation with respect to the inclusion of interest in pecuniary awards. Allowances of interest have been made from time to time by international tribunals acting under arbitral agreements which, like the Agreement of September 8, 1923, have made no mention of this subject. . . . Other Agreements have contained stipulations authorizing awards of interest under specific conditions and for more or less definitely prescribed periods. . . . None of the opinions rendered by tribunals created under those agreements with respect to a variety of cases appears to be at variance with the principle to which we deem it proper to give effect that interest must be regarded as a proper element of compensation. It is the purpose of the Convention of September 8, 1923, to afford the respective nationals of the High Contracting Parties, in the language of the convention, "just and adequate compensation for their losses or damages." In our opinion just compensatory damages in this case would include not only the sum due, as stated in the Memorial, under the aforesaid contract, but compensation for the loss of the use of that sum during a period within which the payment thereof continues to be withheld. However, the Commission will not award interest beyond the date of the termination of the labors of the Commission in the absence of specific stipulations in the Agreement of September 8, 1923, authorizing such action.

As reported in Ralston, *Supplement to the Law and Procedure of International Tribunals* 58, the Franco-Mexican Commission, in the case of Georges Pinson, laid down the following rule:

(b) upon indemnities on account of requisitions and international offenses, interest will be due at the rate of six per cent per annum, to run from the date of the decision.

This Commission is of the view that the award of interest is in conformity with the applicable principles of international law and should be allowed. The rate of such interest, found to be 6 per cent per annum for the purpose of this and all similar claims, has not been challenged.

Finally, the Government of Yugoslavia takes exception to the statement expressed in the Proposed Decision herein that "the conclusions here reached will apply with equal force to all awards whether heretofore or hereafter made, so as to obtain uniformity of treatment so far as practicable." That Government argues that the application of the 44 to 1 conversion rate and the award of interest to claims already adjudicated would be contrary to the

provisions of Article 8 of the Agreement which, it urges, gives complete finality to Commission adjudications.

Article 8 of the Agreement provides:

The funds payable to the Government of the United States under Article 1 of this Agreement shall be distributed to the Government of the United States and among the several claimants, respectively, in accordance with such methods of distribution as may be adopted by the Government of the United States. Any determinations with respect to the validity or amounts of individual claims which may be made by the agency established or otherwise designated by the Government of the United States to adjudicate such claims shall be final and binding.

Simple reading of those provisions clearly shows that the finality of Commission adjudications applies and was intended to apply only to claimants, and officers and departments of the Government of the United States, including the judiciary. This is also made clear by Section 4 (h) of the International Claims Settlement Act of 1949, implementing the Agreement, which provides:

The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

We know of no rule of law, international or domestic, which forbids a court, commission, or other arbitral or adjudicating body from re-examining the correctness of its prior findings and taking corrective action, either on the motion of a party in interest or on its own motion. We do not believe any such doctrine of estoppel is in effect or can be justified. We recognize that, to the extent retrospective applicability is sought to be applied to matters finally and completely determined, there is not unanimity of opinion as to a tribunal's authority, without the consent of the Governments involved, to reopen and modify or alter final decisions. Such rules of finality, however, to the extent they have found acceptance in the field of international law, have been applied by mixed tribunals. We believe a substantial and significant distinction exists between such tribunals and one such as this where adjudicating authority has been committed, entirely and exclusively, to only one of the Governments involved. The relative novelty of lump-sum settlements of large blocks of claims and single-nation dispositions in the field of international claims permits the application of concepts which may be regarded as being in conformity with the highest traditions of international

law, justice and equity without, at the same time, departing from fixed precedents, if there be such on the question at hand.

The problem of modification or revision does not arise, in any event, with respect to this claim. The findings made were incorporated into a "Proposed Decision" which, by the Agreement (Article 9 (b)), the Act (Section 4 (h)), and the Commission's Rules of Practice and Procedure (Section 300.5) is subject to modification or revision, either by action of the affected claimant, the Government of Yugoslavia, or the Commission on its own motion. Similarly, all other proposed decisions may be modified or revised before they attain the status of a "final" decision. The Government of Yugoslavia does not suggest that any problem exists with respect to awards which may hereafter be made on undetermined claims or upon those wherein proposed, rather than final, decisions have been issued. To the extent that awards have been made through final decisions, our findings here will require their revision.

The Commission finds that the exchange rate of 44 dinars to \$1 should be applied to all of its awards and that interest at 6% per annum, for the appropriate period of time in each case, should be granted.

The Proposed Decision herein is hereby adopted as the Commission's Final Decision on this claim.

Dated at Washington, D.C.

June 15, 1954.

Valuation.—The Commission concluded that awards under the Yugoslav claims program should be measured by the values of the properties on the dates of nationalization or other taking. However, it was faced with the difficult problem of determining precisely what such values were. The taking of property by Yugoslavia occurred during the 1940's when the economic conditions resulting from the existence of war gave rise to inflationary trends. Production could not hope to satisfy the increased demands for food and goods from the military and civilian population. These conditions caused a distortion of the price structure which was aggravated by depreciation in the value of Yugoslav currency. A discussion of Yugoslav currency appears in the *Claim of Anton Tabar, et al.*, at page 129.

For these reasons, the Commission recognized that an appraisal or valuation of property during the war years would bear little resemblance to the true value. Accordingly, the Commission determined that values in 1938 when economic conditions were stable should be employed as the initial point of reference. This

approach permitted the Commission to make appropriate adjustments depending upon the circumstances in any case. As an aid to this endeavor, the Commission maintained a Field Office in Belgrade, Yugoslavia, which forwarded information concerning valuations in general as well as the results of independent investigations. The Field Office was staffed by experts who frequently made on-the-spot appraisals, and consulted with local experts.

With respect to awards, other factors had to be considered. For example, an award was measured by the value of the owner's equity, which is discussed in the *Claim of Manfred Sternberg*, appearing at page 62. The values of usufructs, life estates and remainder interests had to be determined, as illustrated in the *Claim of Anny Aczel*, appearing at page 81. It was also necessary to consider whether inheritance taxes had been paid, as indicated in the *Claim of Anthony Kampf*, appearing at page 69.

The Commission determined the value of property on the basis of all the evidence of record. Pursuant to "principles of international law, justice, and equity" (Section 4(a) of the 1949 Act), the Commission held that an award should not be limited to the amount claimed. Accordingly, if the evidence supported a value in excess of the amount claimed, the higher amount was allowed. (*Claim of Peter Schuetz*, Docket No. Y-1187, Dec. No. Y-825.) On the same reasoning, claimants were not prejudiced by errors of law or lack of knowledge of the facts. If the evidence established a greater ownership interest than claimed, the greater interest was the basis for the award. (*Claim of Anton Ketterer*, Docket No. Y-986, Dec. No. Y-767.)

Trust funds.—Occupation authorities frequently confiscated merchandise inventories and other items of personal property. An interesting question was presented in one case in which such merchandise was involved. It appeared that the inventory had a value of 4,217,914.27 dinars on the date the business enterprise was taken by Yugoslavia. The evidence indicated that the occupation authorities had liquidated the original inventory and had replaced it with inventory subsequently acquired by them in the normal course of business operations. The Commission noted that the proceeds from sales of the inventory belonging to claimants was used to acquire the merchandise eventually taken by Yugoslavia. The contention by Yugoslavia that the newly acquired merchandise could not be deemed to be the property of claimants was found to be without merit. The claim was allowed, and the award was measured by the value of the merchandise admittedly taken by Yugoslavia. In effect, the Commission held that the proceeds constituted trust funds belonging to claimants, and that upon the purchase of merchandise with such funds, title thereto was held in trust for claimants. (*Claim of Robert Robich, et al.*, Docket No. Y-1647, Dec. No. Y-1548.)

Effective compensation.—Under international law, the nationalization or other taking of property obligates the offending nation to pay prompt, effective and adequate compensation to the owner of the property. Payment of adequate compensation in local currency was held to constitute "effective compensation" under international law. (*Claim of Hans H. Kohler*, Docket No. Y-526, Dec. No. Y-316-A.) Payment of adequate compensation

to claimant's agent, acting under a power of attorney, likewise satisfied the requirements of international law. (*Claim of Mary Nartnick*, Docket No. Y-1550, Dec. No. Y-803.)

Exchange rates.—As indicated above, 1938 valuations were utilized as the initial point of reference in determining the amount of an award under the Yugoslav Claims Agreement of 1948. If the values of properties on the dates of taking were found to be equivalent to their values in 1938, the rate of exchange existing in 1938 was applied in converting Yugoslav dinars to United States dollars. In the instant *Senser* decision, the Commission determined that the proper rate of exchange was 44 dinars for \$1.00.

Early in the administration of the Yugoslav claims program, the Commission determined that 55 dinars in 1938 was equivalent to \$1.00 on the basis of the conversion rate recognized by Yugoslavia in 1938. That rate was obtained from the average rate during 1938, which resulted in a rate of 43.43 dinars for \$1.00. A premium of 28.5% provided by Yugoslavia was added, and the average rate appeared to be 55.8 dinars for \$1.00. By this means the Commission equated the purchasing power of 55 dinars in 1938 with \$1.00 in that year. (*Claim of Karl Hoegler, et al.*, Docket No. Y-1414, Dec. No. Y-353, Proposed Decision.) Upon reconsideration of this matter in the light of the *Senser* decision, it was concluded that the correct rate of exchange in 1938 was 44 dinars for \$1.00. Accordingly the Final Decision gave effect to the proper rate of exchange.

Consistent with the principle that an award be measured by the value of the property on the date of loss, the Commission applied the official exchange rate of 50 dinars for \$1.00, fixed by Yugoslavia immediately after World War II, in determining the value of a dinar bank account confiscated on June 30, 1945. (*Claim of Christian S. Phillips, et al.*, Docket No. Y-890, Dec. No. Y-1427.)

Accepted valuations and appraisals expressed in currency other than dinars or United States dollars were converted as follows:

Lira—dinar.—Valuations with respect to real property in the so-called Zone "A" area of Pula, formerly part of Italy, expressed in Italian lire, were converted at the rate of 100 lire for 15 Yugoslav dinars pursuant to the Yugoslav Decree of September 8, 1947. In one claim, a real property mortgage was evaluated by the application of the conversion rate of 100 lire for 15 dinars. However, the encumbered property was appraised in terms of 1938 values. Accordingly, the dinar value of the mortgage was subtracted from the value of the encumbered property and the result was converted at the rate of 44 dinars for \$1.00 to determine the amount of the mortgagor's award. (*Claim of Ersilia Nicolini Aaron*, Docket No. Y-1708, Dec. No. Y-1150.) On the other hand, lire in the so-called Zone "B" area of Pula were converted at the rate of 100 lire for 30 dinars pursuant to the same decree. This rate was applied in a case in which the values of both the mortgages and the encumbered property were expressed in Zone "B" lire. Accordingly, claimant's equity after reduction for the mortgages, thus expressed in dinars, was converted at the rate of 50 dinars for \$1.00 because the property was appraised in terms of postwar values. (*Claim of Emanuel Herzog*, Docket No. Y-381, Dec. No. Y-504.)

Crown (krone)—dinar.—The value of a pre-World War I mortgage expressed in Austrian crowns was converted at the rate of 4 crowns for 1 dinar pursuant to the Yugoslav Law of October 25, 1922, and converted again at the rate of 44 dinars for \$1.00 to determine the mortgagee's award. (*Claim of Mary Loschke, et al.*, Docket No. Y-1161, Dec. No. Y-963.)

A discussion of mortgages, related to the Aaron, Herzog and Loschke claims, *supra*, appears in the *Claim of Manfred Sternberg*, at page 62.

Lira—dollar.—The Commission found that 100 lire was equivalent to \$5.26 in 1938 on the basis of official rates of exchange published in the Federal Reserve Bulletin (March 1938, p. 244), and Statistical Year Book of the League of Nations for the Years 1938-1939 (p. 226). (*Claim of Isidore S. Morscher*, Docket No. Y-1349, Dec. No. Y-927.)

Pengo—dinar.—In deducting an encumbrance for unpaid inheritance taxes, expressed in Hungarian pengos, the Commission relied upon the Yugoslav Law of April 5, 1945, which provided for the conversion of pengo into dinar at par. (*Claim of Frank Hiegl*, Docket No. Y-827, Dec. No. Y-720.) Inheritance taxes are discussed in the *Claim of Anthony Kampf, et al.*, at page 69.

Interest on awards.—In the instant *Senser* claim, Yugoslavia had contended that the allowance of interest on awards would be inconsistent with international law. As indicated in the decision, the Commission carefully considered this issue in the light of the Yugoslav Claims Agreement of 1948, the International Claims Settlement Act of 1949, and recognized principles of international law. The Commission concluded that interest should be allowed at the rate of 6% per annum from the date of taking to August 21, 1918, the date of payment by Yugoslavia pursuant to the Agreement. However, interest was not allowed in claims under the Panamanian Convention of 1950, which is discussed in the *Claim of Mariposa Development Company*, below.

In the Matter of the Claim of

Docket No. PAN-33
Decision No. PAN-66

**THE MARIPOSA DEVELOPMENT
COMPANY**

Against the Government of Panama

Value of land in the El Encanto Tract determined to be \$4.00 per hectare under Section 4(a), Title I of the 1949 Act and the Panamanian Claims Convention of 1950.

In claims based on nullification of title to real property in the El Encanto Tract by Supreme Court of Panama, determination whether nullification was legal deemed unnecessary because Panama agreed, without admission of liability, to pay for such claims in Panamanian Claims Convention of 1950.

Awards on claims against Panama not increased by interest.

PROPOSED DECISION

This is a claim for \$637,732 by Margaret H. Shafer as Receiver for the Mariposa Development Company, and is based on the nullification on October 20, 1931, by a judgment of the Supreme Court of the Republic of Panama, of the Mariposa Development Company's title to 50,712 hectares of land in the so-called "El Encanto Tract," located in the Districts of Donoso and San Francisco, Provinces of Colon and Veraguas, Panama.

It is established by evidence before the Commission that:

1. Claimant purchased 58,412 hectares of land in the El Encanto Tract, from Herbert H. Howe, by two deeds, the first dated November 23, 1914, and the second dated March 30, 1915. The deed dated November 23, 1914, which was registered on December 9, 1914 as Document No. 576 in the National Property Register of Panama, on page 577, entry 4969, of the Daily Record, conveyed 3,000 hectares to claimant. At that time, the area of the property to be conveyed was not known, but for fiscal purposes, an area of 3,000 hectares was arbitrarily set. By deed dated March 30, 1915, which was registered on April 10, 1915, as Document No. 139 in the National Property Register of Panama, on page 181, entry 1476, of the Daily Record, the area conveyed to claimant was corrected to 58,412 hectares of land.

2. Claimant conveyed 7,700 hectares of the land by several deeds, which were duly recorded, to the Panama Land and Timber Company.

3. Claimant was the owner of the balance of 50,712 hectares of land in the El Encanto Tract, when such land was declared the property of the Republic of Panama by a judgment of the Supreme Court of the Republic of Panama on October 20, 1931.

4. Claimant was incorporated under the laws of California on August 14, 1914, and protocolized in Panama October 28, 1914 and February 27, 1915. Claimant forfeited its corporate powers in 1932 because of nonpayment of taxes, and such charter has not been reinstated.

5. On February 26, 1952, the Superior Court of the State of California, in and for the County of Santa Clara appointed Margaret H. Shafer, Receiver for Mariposa Development Company, and ever since that date she has been and is now the duly qualified receiver of claimant corporation.

6. All of the claimant's directors and shareholders were nationals of the United States on October 20, 1931, and a substantial majority of owners of its stock are now nationals of the United States.

Pursuant to the Convention dated October 11, 1950, between the Governments of the United States and Panama, the latter,

without admission of any liability, agreed to pay to the United States the total sum of \$400,000 in settlement of all claims of American citizens who had acquired land in the El Encanto Tract. It is, therefore, unnecessary for this Commission to inquire into the circumstances or legality of the nullification.

The principal issue in this claim, and the 66 other claims before the Commission based upon the taking of land in the El Encanto Tract, is that of value. In the Memorial, filed by the United States with the General Claims Commission, United States and Panama (Under the Conventions of July 28, 1926 and December 17, 1932), on behalf of the Mariposa Development Company and 55 other claimants for approximately 114,000 hectares, or approximately 95% of the entire Tract, the land was valued at \$12.50 a hectare. That value was supported by evidence that some 50 parcels had been sold at that price to individual purchasers. There is also evidence of sales at \$10.11 a hectare, \$6.50 a hectare, \$2.70 a hectare, etc. It is also shown that approximately 50,000 hectares, claimed by the Mariposa Development Company, were assessed for tax purposes from 1921 to 1924 at a little less than \$3.00 a hectare; from 1925 to 1928 at \$11.25 a hectare, and from 1929 to 1932 at a little more than \$3.00 a hectare.

After the denial of the claims of the Mariposa Development Company, and others, by the General Claims Commission in 1933, on jurisdictional grounds, extended discussions and negotiations were had between representatives of the Governments of the United States and Panama for the lump-sum settlement of all claims of American nationals who had acquired property in the El Encanto Tract. The final sum fixed by the two Governments, in the Convention of October 11, 1950 was \$400,000 for the entire Tract of approximately 120,000 hectares, or about \$3.33 a hectare. No evidence has been filed with the Commission indicating that any of the land in the Tract was improved or that it varied in value.

On consideration of all evidence and data of record, the Commission is of the opinion that all of the land in the El Encanto Tract was worth at least \$4.00 per hectare on October 20, 1931, the date of the final judgment of the Supreme Court of Panama, and that all meritorious claims should be allowed at that value. Inasmuch as there is only the lump sum of \$400,000 available, less authorized deductions for administration expenses, for the satisfaction of all the claims, it is apparent that an award for a larger amount, or an award of interest, could not be satisfied from the proceeds of such fund.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Margaret H. Shafer, as Receiver of the Mariposa Development Company, claimant, in the amount of \$202,848 without interest.

Dated at Washington, D.C.

June 30, 1954.

Value of land.—All of the 67 claims filed against Panama under the Panamanian Claims Convention of 1950 (appearing at page 737) involved the issue of the value of the land in the El Encanto Tract. The Commission had ruled in administering the Yugoslav claims program that awards would be based upon the value of the property on the date of loss, utilizing values in the stable year of 1938 as the initial point of reference. (*Claim of Joseph Senser*, appearing at page 149.)

That ruling was applied to claims against Panama insofar as value on the date of loss was concerned. However 1938 values could not be considered because claims against Panama arose on October 20, 1931, when the Supreme Court of Justice of Panama declared the El Encanto Tract the property of the Republic of Panama. As the decision on this claim indicates, the assessed tax value of the unimproved land on the date of loss was slightly more than \$3.00 per hectare while the available funds for payment of the claims, \$400,000, appeared to support a value of about \$3.33. Upon applying "principles of international law, justice, and equity" in accordance with Section 4(a), Title I of the 1949 Act, the Commission concluded that the value of the land was \$4.00 per hectare, and all awards were measured by this standard.

Liability of Panama.—Unlike the Yugoslav Claims Agreement of 1948, which discharged claims against Yugoslavia for the "nationalization or other taking" of property, the Panamanian Claims Convention of 1950 settled claims against Panama "without reference to the question of liability." Consequently, a finding that Yugoslavia had violated international law by failing to pay prompt, effective and adequate compensation for the taking of property was a *sine qua non* for a favorable determination. In the case of Panama, however, it was necessary merely to find the nullification of title to the property by action of the Supreme Court of Panama. Accordingly, decisions on claims against Panama scrupulously omitted the characterization that they were claims for the nationalization or other taking of property. Nevertheless, they were deemed to be claims of that type as a matter of law because the Commission would have had no jurisdiction over claims against Panama otherwise. The Commission's authority stemmed from Section 4(a), Title I of the 1949 Act which

conferred jurisdiction over claims "included within the terms of the Yugoslav Claims Agreement of 1948, or included within the terms of any claims agreement hereafter concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof."

Interest on awards.—The evidence indicated that the land in the El Encanto Tract did not vary in value and had no improvements. Since \$400,000 was available for the payment of claims covering land approximating 120,000 hectares in size, the Commission was morally certain that the funds would be insufficient to pay all claims in full. Accordingly the Commission concluded that no interest should be allowed in any award. These circumstances are to be distinguished from those prevailing in the Yugoslav claims program where the amount of the allowable claims could not be estimated with any degree of certainty. Consequently the Commission included interest in awards under that program in accordance with settled principles of international law. (*Claim of Joseph Senser*, appearing at page 152.)

CLAIMS AGAINST BULGARIA, HUNGARY, AND RUMANIA

Statutory authority: Title III of the International Claims Settlement Act of 1949, 69 Stat. 570 (1955), 22 U.S.C. §§ 1641-1641q (1964), as amended, 72 Stat. 531 (1958), 22 U.S.C. 1641j (1964).

BULGARIAN CLAIMS PROGRAM STATISTICS

Number of claims: 391.

Amount asserted: \$25,455,927.

Number of awards: 217.

Amount of awards: Principal, \$4,684,187.

Interest, \$1,887,638.

Amount of fund: \$2,613,325.59.

Program completed: August 9, 1959.

HUNGARIAN CLAIMS PROGRAM STATISTICS

Number of claims: 2,725.

Amount asserted: \$225,816,966.

Number of awards: 1,153.

Amount of awards: Principal, \$58,181,408.

Interest, \$22,114,639.

Amount of fund: \$1,653,647.09.

Program completed: August 9, 1959.

RUMANIAN CLAIMS PROGRAM STATISTICS

Number of claims: 1,073.

Amount asserted: \$259,742,036.

Number of awards: 498.

Amount of awards: Principal, \$60,011,348.

Interest, \$24,717,943.

Amount of fund: \$20,057,346.65.

Program completed: August 9, 1959.

In the Matter of the Claim of

Claim No. RUM-30214
Decision No. RUM-30

MARGOT FACTOR

Against the Government of Rumania

For purposes of Section 303(1), Title III of the 1949 Act, "United Nations nationals," as used in treaties of peace with Bulgaria, Hungary or Rumania, means United Nations nationals by virtue of being United States nationals. Claim denied under Section 303(1) because owners of property lost during World War II, having been then Rumanian nationals, were not "nationals of the United States," although they may have been "United Nations nationals" under the treaty of peace with Rumania.

Nationality prerequisites satisfied under Section 303(1) if the claims against Bulgaria, Hungary and Rumania were owned by nationals of the United States on the respective armistice dates (October 28, 1944—Bulgaria; January 20, 1945—Hungary; and September 12, 1944—Rumania) and continuously thereafter until the dates of filing with the Commission.

Nationality prerequisites satisfied under Section 303(2) if the claims were owned by nationals of the United States on the dates they arose and continuously thereafter until the dates of filing with the Commission.

FINAL DECISION

This is a claim against the Government of Rumania under Section 303 of the International Claims Settlement Act of 1949, as amended, for the value of the property allegedly taken from Julius and/or Rositta Bohus, the uncle and aunt of the claimant, MARGOT FACTOR, at various times between 1940 and 1951. Neither Mr. nor Mrs. Bohus was ever a national of the United States. The claimant became a United States national by naturalization on July 23, 1943, and the claim was assigned to her on March 5, 1952.

In a Proposed Decision issued on February 14, 1957, the claim was held to be not compensable under Section 303(2) of the Act because it was not owned by a United States national at the time it arose, and was held to be not compensable under Section 303(1) of the Act because it was not owned by a United States national on September 12, 1944, the date of the armistice with Rumania. Objection has been raised to that portion of the Proposed Decision which denies the claim under Section 303(1).

Section 303 of the Act provides in pertinent part as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to—(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania.

Article 24 of the treaty of peace with Rumania provides that Rumania shall restore all legal rights and interests and return all property in Rumania of the United Nations and their nationals, or, where property cannot be returned or has been damaged as a result of the war, shall pay compensation therefor. Article 25 requires the restoration of, or compensation for, property which was the subject of measures of sequestration, confiscation or control on account of the racial origin or religion of persons under Rumanian jurisdiction. United Nations nationals are defined in article 24 as including individuals who are nationals of any of the United Nations and have been such since the date of the armistice with Rumania, and also all individuals who were "treated as enemy" under the laws in force in Rumania during the war.

It is contended that Mr. and Mrs. Bohus, though Rumanian nationals during the war, were "treated as enemy" under Rumanian laws then in effect, and consequently were United Nations nationals within the meaning of article 24 of the treaty on the date of the armistice and thereafter. The claim for loss having subsequently become that of a United States national, the argument is that the requirements as to nationality for a claim under Section 303(1) of the Act are fulfilled.

For an award under Section 303(1) of the International Claims Settlement Act, however, there must be a claim compensable under a referenced article of the treaty, a failure by the foreign government to make compensation, *and* a fulfillment of the eligibility requirements of the Act itself. The Commission finds that as to nationality, in the case of a claim against Rumania under Section 303(1) of the Act, these requirements are that the claimant be a United States national, and that on September 12, 1944, the date of the armistice with Rumania, the claim have been owned by a United States national. The Commission holds that the requirements as to nationality are not met in this claim.

We find no merit in the argument advanced by counsel for claimant that the wording of the definition of "National of the

United States" in Section 301(2) of the Act indicates that such nationality is required only as of August 9, 1955, the date of enactment. That definition reads, in part:

"National of the United States" means (A) a natural person who *is* a citizen of the United States. . . . (emphasis supplied)

In that definition, the word "is", the present tense of the verb "to be", was used in order to match the present tense of the verb "means". The Commission finds that the definition is not intended for use as a substantive rule under Sections 303, 304, or 305 of the Act. It is for use solely in determining whether or not a person is a United States national as of any particular time, and has nothing to do with establishing the date on which such nationality must be found to have existed if an award is to be made under the Act. If claimant is a United States citizen today, claimant is a United States national today, within the definition. The same is true, speaking as of August 9, 1955, or as of March 5, 1952, when this claim was assigned, or as of any other date which may be pertinent. We must look to the appropriate subsection of Section 303 (in this case, Section 303(1)), to determine the pertinent date—i.e., the date on which claimant, or her predecessor in interest, must have been a citizen in order to qualify for an award.

United States nationality is clearly required at the time of filing the claim, since it is only the claims of "nationals of the United States" that the Commission is authorized to receive and determine under the opening sentence of Section 303. Had it been the intention of Congress to require no more than this, the phrase "nationals of the United States" need not have been repeated in the ensuing paragraphs; and Section 303(1) need only have referred to failure to "restore or pay compensation for property" as required by the treaty. The repetition of the phrase "nationals of the United States" in each of the subsections of Section 303 must have some effect other than to require such nationality at the time of filing the claim, or each such usage is superfluous; and it is elementary that a statute must be so construed as to avoid surplusage, and to give effect to every word, clause, and sentence.

The language of Section 303(1), in its ordinary import would appear to embrace persons who, while nationals of the United States, suffered property losses later provided for in the treaties of peace. This reading is altogether consistent with application of the customary rule of international law requiring United States ownership of a claim at the time of loss and continuously thereafter. In the Proposed Decision, there was adopted a modifi-

cation which should prove less stringent in most, if not all, cases—that of requiring United States nationality on the date of the armistice—a rule for which ample support is found in the history of the legislation culminating in the enactment of the amendment to the International Claims Settlement Act of 1949 which included, among other things, Section 303.

At one stage of the legislative process, the bill contained the so-called Dodd statement, adding to Section 303(1) the following language:

No claim under this paragraph shall be denied on the sole ground that the natural person who originally suffered the loss was not a national of the United States if on the date of the armistice with the country with respect to which his claim is asserted and continuously thereafter until September 15, 1947, such person was a permanent resident of the United States, and if he had at any time prior to the date of such armistice formally declared his intention of becoming a citizen of the United States and had become a citizen of the United States by September 15, 1947.

The drafters of the foregoing quite obviously anticipated that unless the bill were specifically made to provide otherwise, the Commission would be compelled to combine the nationality requirements of the treaty and the Act with a resultant exclusion of all who were not United States nationals on the date of the *armistice*. The Senate Committee on Foreign Relations rejected this liberalizing amendment, stating in its report (S. Rep. No. 1050, 84th Cong., 1st Sess. 8 (1955)):

The general principle controlling the eligibility of a natural person to file a claim against another government is the familiar rule of international law that such a claim must be continuously owned by a national of the claimant State from the time the claim arose until the date of its presentation. This principle is followed in the bill as it passed the House with respect to the Russian and Italian claims, as well as for claims based upon nationalization and compulsory liquidation of property in the territory of Bulgaria, Hungary, and Rumania. It is not followed with respect to war damage claims or claims of American stockholders in foreign owned corporations. (See sec. 5 above.) Thus, the bill as approved by the House does not contain a uniform standard of eligibility, and consequently discriminates in principle between various categories of claimants.

In the draft bill originally submitted by the administration to the House Committee on Foreign Affairs, the same principle was applied to claims based upon war damage in those three countries. As reported by that committee, however, and passed by the House, the principle was abandoned for such claims. Instead, section 303

declares that the claimant need not have been an American citizen when the loss was suffered, provided that he was (a) a person who had declared his intention to become an American citizen at the time of the armistice, (b) had become a citizen by September 15, 1947 (the date of the peace treaty), and (c) resided in the United States permanently from the date of the armistice to the date of the peace treaty.

Continuing, the Senate Committee stated in its report that after careful consideration, and weighing of all pertinent factors, it concluded that such a precedent was not desirable, keeping "uppermost in view the interest of those individuals who did possess American nationality at the time of loss." The committee then acted upon its conclusion by deleting the last sentence of Section 303(1), explaining that the deletion:

would have the effect of limiting the eligible class to claimants who were American citizens at the date the loss was sustained.

The history of the bill is replete with other proposed amendments designed to liberalize the nationality requirements and to broaden the class of eligible claimants, all of which were eventually rejected. From all of this, it is clear that the Congress, in determining prospective beneficiaries of the fund involved in this legislation, was not satisfied with the treaty requirements for nationality. Rather, the Congress insisted upon nothing less than *United States* nationality at the time the claim arose, whether that be viewed as the date of loss (often extremely difficult or impossible to determine with exactitude) or, as in the treaty, the more administratively feasible date of the armistice.

The Commission is of the opinion that under Section 303(1) the less stringent requirement of United States nationality on the armistice date should be the standard used. Thus, it may be said that whereas the treaty requires United Nations nationality on the date of armistice, the statute provides relief only to those who had United Nations nationality by virtue of United States nationality. To this extent, the customary rule of international law may be regarded as having been modified by the treaty and by the International Claims Settlement Act.

The Commission has carefully considered the entire record, including the contentions advanced in claimant's behalf by brief and oral argument. The Commission concludes that in order for an award to be made under Section 303(1) of the Act, the property forming the basis of the claim, or the claim arising from its loss, must have been owned by a national or nationals of the United States on the date of the armistice with the country

against which the claim is filed. Accordingly, the Proposed Decision herein is affirmed, and the claim is denied.

Dated at Washington, D.C.

May 28, 1957.

SUPPLEMENTAL DECISION

In its Final Decision issued May 28, 1957, after a hearing and due consideration of the claimant's objections to the Proposed Decision, the Commission denied the claim of Margot Factor for compensation under the International Claims Settlement Act of 1949, as amended, on the ground that the property upon which the claim is based was not owned by a United States national on September 12, 1944 or at the time the loss occurred. Upon petition, claimant was granted a rehearing on July 11, 1957 at which time it was asserted that the Commission erred in its construction of Sections 301 and 303, Title III, of the Act and applied the Act so as to raise a question of constitutionality.

The contention of counsel for claimant that Section 303 should be construed so as to require United States nationality of the claim only as of August 9, 1955, the date of the enactment of Public Law 285, 84th Congress, was fully treated by the Commission in its Final Decision. We find no compelling reasons advanced for modifying our conclusion that the Congress intended to require more, in order that a claimant be eligible for compensation, than United States nationality on August 9, 1955. The Commission adheres to its conclusions as set forth in its previous decisions in this matter.

As a rule, it has been the position of the Department of State that naturalization is not retroactive so as to justify the espousal of claims arising prior to the acquisition of United States citizenship. This position was stated in language most pertinent to the facts in this claim, by Mr. Fish, Secretary of State, to Mr. Miller, May 16, 1871, 89 *M.S. DOM. Let.* 348:

By adopting a foreigner, under any form of naturalization, as a citizen, this government does not undertake the patronage of a claim which he may have upon the country of his original allegiance or upon any other government. To admit that he can charge it with this burden would allow him to call upon a dozen governments in succession, to each of which he might transfer his allegiance, to urge his claim. Under such a rule the government supposed to be indebted could never know when the discussion of a claim would cease. All governments are, therefore, interested in resisting such exten-

sion. Quoted in VI Moore, *International Law Digest* 637 (1906).¹

Counsel for claimant argues that a claim under the Treaty of Peace with Rumania, even though originally a claim of a Rumanian national (as here) is an international claim espousable by the United States and therefore covered by Section 303 in which this Commission is directed to determine claims in accordance with applicable substantive law, including international law.

We have not stated that this claim is not espousable by the Government of the United States. We have stated that the claimant does not meet the eligibility tests established by the Congress for recovery under the International Claims Settlement Act of 1949, as amended. That this legislation was not intended to be an all-inclusive remedy for all claims which the United States Government could elect to espouse under international law is made clear by a mere reading of the Act. For example, Section 303 is concerned only with claims based upon property and contractual rights. No provision is made for tort claims; and, furthermore, the Congress saw fit to limit narrowly the kind of contractual rights which could be the basis of a claim to those expressed in dollars and acquired by United States nationals prior to certain specific dates. If there can be any doubt that the Congress elected to compensate only certain types of claims and only those held by United States nationals at the time their claims arose, it will quickly be dispelled by an examination of the legislative history of Public Law 285, 84th Congress. The House Committee on Foreign Affairs stated in its report (H. R. Rep. No. 624, 84th Cong., 1st Sess. 5, 6 (1955)):

Although this bill is an international claims settlement bill, it should be made clear that all claims of American citizens against the Soviet Union and the three satellite countries will not be settled by virtue of its passage. . . . This bill does not include claims arising since the treaties for nationalization, compulsory liquidation, or other seizure, and it does not include as claimants the large number of persons who have become American citizens since the treaties were ratified. It would therefore be a mistake to consider this bill as doing justice to Americans whose rights have been violated by the Soviets and their satellites. There is no way in which this bill can be amended to do justice to all of these claimants and all of their claims by distributing \$36 million. . . . The way to secure justice for these thousands of American citizens with their millions in claims is to induce the Soviets and their satellites to recognize, adjudicate fairly, and then pay these claims. All of them are based upon promises,

¹ To the same effect, are such recent statements as that prepared by the Legal Advisor, Department of State, in the Memorandum, "Citizenship as a Basis for International Claims," April 22, 1952, at page 14.

agreements, and international law which prevails among civilized nations. If, as, and when, the President meets "at the summit" with the Soviet leaders, it is our hope that he will place high on the agenda of matters to be considered the rights of these American citizens. It might well be that, as a prerequisite to considering future promises by the Soviets, he would insist upon performance of the past promises involved in these unsettled claims, and would require their early satisfaction as a token of the good faith that must be demonstrated by deeds, not words, before just and lasting peace can come.

The same report at pages 12 and 13 specifically defined eligible claimants for treaty claims as persons who were United States nationals on the date of the armistice with the country involved and upon the date of the peace treaty but stated that the proposed bill substituted therefor the more liberal requirement that the claimant have been a permanent resident of the United States on the armistice date and have by then formally declared his intention to become a United States citizen.

The Senate Committee on Foreign Relations rejected this liberalizing provision, stating in its report (S. Rep. No. 1050, 84th Cong., 1st Sess. 9 (1955)) :

The committee has carefully considered the arguments advanced in support of the proposed extension of eligibility which, if adopted, would mark the first time in the claims history of the United States that a declaration of intention was equated with citizenship. After weighing all pertinent factors, the committee has concluded that such a precedent is not desirable. While sympathetic to the plight of those unfortunate individuals who were not American citizens when they sustained war losses, the committee has had to keep uppermost in view the interest of those individuals who did possess American nationality at the time of loss. It is these persons who have a paramount claim to any funds which may be available. . . . To include the non-national-in-origin group would only dilute the funds still further, and increase the injustice to American owners. For these reasons, the committee decided to delete the last sentence of section 303, paragraph (1), which would have the effect of limiting the eligible class to claimants who were American citizens at the date the loss was sustained.

In the enactment of the International Claims Settlement Act, as amended, the Congress thus adopted, for claims thereunder, the traditional rule :

A state is responsible to another state which claims in behalf of one of its nationals only in so far as a beneficial interest in the claim has been continuously in one of its nationals down to the time of the presentation

of the claim. *The Harvard Research in International Law*.²

Finally, claimant's counsel alleges that this Commission's interpretation of the Act represents a discrimination between classes of United States citizens which contravenes the Constitution, particularly the due process clause of the Fifth Amendment, by arbitrarily and capriciously excluding the claimant and other United States citizens similarly situated from the protection of the Act. It is this Commission's conclusion that the Congress made no distinction between the classes of United States citizens but rather provided for compensation under the Act for certain specific and limited types of claims which were American in origin and continuously held by United States nationals.

Arbitrary discrimination between persons in similar circumstances is a denial of due process but equal protection of the laws is not denied by statute if all persons subject to it are treated alike under similar circumstances and conditions in respect both of the privileges conferred and the liabilities imposed. *Russian Volunteer Fleet v. U.S.*, 282 U.S. 481 (1931)

The Commission's interpretation of the Act does not effect a discrimination between persons similarly situated. It requires a showing as to the ownership of a claim by nationals of the United States without regard to whether such nationality was acquired by birth or by naturalization.

It is therefore ORDERED that the Final Decision herein be and the same is hereby sustained and affirmed.

CONCURRING OPINION

I concur in the result arrived at in this case by my colleague. There appears no justification in law or in equity which would permit construction of Section 303 so as to require United States nationality of claimants only as of August 9, 1955, the date of enactment of Public Law 285, 84th Congress. To further argue this obvious conclusion would serve no purpose as it is so well established in international law that in order for a country to espouse a claim of one of its nationals he or she must have been a national at the time of loss or damage.

My concern here is the general approach to this case by the Commission as set forth in the Final Decision issued on May 28, 1957 which, in my opinion has the effect of a restricted interpretation of Public Law 285. I conceive it to be our duty under this law to grant, where justified on the facts and in law, claims of all persons who had property damaged, confiscated or other-

² 23 Am. J. Int'l L., Spec. Supp. 133, 198 (1929).

wise taken as a consequence of war. We must necessarily be liberal in our interpretation of the law and we must, because of the peculiar circumstances in the area covered by Public Law 285, establish certain presumptions. The question of liberality of construction of this law was well stated in the opinion of my colleagues as expressed in the decision of the majority of the Commission in the Siegel case (SOV-40017) where it found that Public Law 285 was remedial legislation and "should be liberally construed." Although I dissented in the result arrived at in that case, I cannot agree too vigorously in that conclusion set forth in the Commission's findings. The liberal approach of the Commission is essential in determining cases where ordinary elements of proof are as difficult to obtain as they are in these cases which affect property located in countries behind the iron curtain. It should be our duty and we should be prepared to go as far as legally possible in compensating these unfortunate claimants for their losses occasioned as a consequence of war. Our measure of compensation in these cases is only small consideration of the heart-rending experiences that have befallen these persons. The scars left by war and the losses to family and family heritage can never be replaced. Here we have an opportunity to compensate these people in some measure for their losses which far exceed anything we can grant them in a monetary manner. What we can do and what we should do wherever possible is to liberally construe the provisions of this remedial legislation.

Dated at Washington, D.C.

September 18, 1957.

Nationality requirements.—Title III of the 1949 Act contains no specific provision regarding the period of time during which a claim must have been owned by a national or nationals of the United States in order to be compensable. In view of the directive in Section 303 that the Commission determine claims "in accordance with applicable substantive law, including international law," the Commission stated the nationality requirement in its Proposed Decision on the *Factor* claim as follows: "Under well established principles of international law, unless otherwise provided by treaty, in order for a claim espoused by the United States to be compensable, the property upon which it is based must have been owned by a national or nationals of the United States at the time of loss, and the claims which arose from such loss must have been owned by a United States national or nationals continuously thereafter."

In further definition of the period of required ownership of a

claim by United States nationals, the Commission issued a Proposed Decision denying a claim because claimant had lost his United States nationality shortly after filing the claim, and therefore the claim had not been owned continuously by a United States national until the date of settlement thereof. However, by Amended Proposed Decision subsequently affirmed and entered as the Final Decision, the Commission granted an award on the claim, finding that claimant had been a national of the United States from the date of his naturalization on April 14, 1947 "up to and including the date of filing of this claim," thereby establishing the principle thereafter adhered to by the Commission that the nationality requirement is satisfied by United States ownership until the filing date, and is not affected by changes in ownership or nationality occurring thereafter. (*Claim of Benedict Lustgarten*, Claim No. RUM-30575, Dec. No. RUM-434, 10 FCSC Semiann. Rep. 119 (Jan.-June 1959).)

As to the beginning of the period of required ownership by United States nationals, this depended in claims against Bulgaria, Hungary or Rumania upon whether the claim was based upon war losses uncompensated as required by the treaties of peace (Section 303(1)), upon nationalization, compulsory liquidation, or other taking of property (Section 303(2)), or upon certain defined contractual obligations of the three governments (Section 303(3)). As illustrated in the *Factor* claim, a claim under Section 303(1) of the Act must have been owned by a national or nationals of the United States on the date of the armistice with the country against which the claim was filed, in order to be found compensable. These dates were October 28, 1944 in the case of Bulgaria, January 20, 1945 for Hungary, and September 12, 1944 for Rumania.

The *Factor* decision in denying a portion of the claim based upon property which had been taken by the Government of Rumania on the ground that the property had not been owned by a United States national on the date the claim arose, also illustrates the requirement for claims under Section 303(2) that the property have been owned by a United States national on the date of loss. In one claim which was denied by Proposed Decision because claimant was not a United States national on the date of nationalization of the subject property, claimant contended that the claim arose not on the date of nationalization, but at some later date after the lapse of a reasonable time within which the Government of Hungary had failed to pay compensation for the property as promised in the nationalizing statute, at which time claimant was a United States national. In its Final Decision the Commission rejected this contention, and affirmed the denial of the claim on the ground that the property had not been owned by a United States national on the date on which it was taken. (*Claim of Hermann F. Broch de Rothermann*, Claim No. HUNG-21100, Dec. No. HUNG-1889, 10 FCSC Semiann. Rep. 85 (Jan.-June 1959).)

Another claimant under Section 303(2) of the 1949 Act contended that he had satisfied the nationality requirements by reason of his having declared his intention to become a citizen of the United States. Claimant reasoned that his declaration

rendered him a natural person "who owes permanent allegiance to the United States" within the meaning of Section 301(2) of the 1949 Act. In concluding that claimant had not met the nationality requirements, the Commission held that one does not owe permanent allegiance to the United States by reason of making a declaration of intention to become a citizen. (*Claim of Szoboles Szunyogh*, Claim No. HUNG-22185, Dec. No. HUNG-333, 10 FCSC Semiann. Rep. 34 (Jan.-June 1959).) For a more detailed discussion of persons who are not citizens of the United States but who are nationals thereof by reason of owing permanent allegiance to the United States, see *Claim of Edward Krukowski*, appearing at page 467.

Section 303(3) of the 1949 Act covers claims based upon obligations "arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1941, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania," thus providing specific dates to begin the period of required ownership by United States nationals. A claim under Section 303(3) of the Act raised the question of whether the nationality requirements of this section were met by a person who acquired contractual rights prior to September 1, 1939 if that person acquired United States nationality thereafter, but prior to the date of loss. The Commission held that Section 303(3) required United States nationality prior to September 1, 1939 as a condition precedent to eligibility for compensation in a claim of this nature against Hungary. Accordingly, recovery was denied to a claimant who became a United States national in 1944. (*Claim of Hedwiga Geller*, Claim No. HUNG-20506, Dec. No. HUNG-36, 10 FCSC Semiann. Rep. 37 (Jan.-June 1959).)

Corporate claimants.—Section 301(2), Title III, of the 1949 Act included within the definition of a "national of the United States" a "corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity." The definition appearing in Title I of the 1949 Act included no specific reference to corporations or legal entities. However, the Yugoslav Agreement of 1948, which was implemented by that Title, contained a provision in Article 2 for claims based on property which at the time of taking was owned "by a juridical person organized under the laws of the United States, or a constituent state or other political entity thereof, twenty percent or more of any class of the outstanding securities of which were at such time owned by individual nationals of the United States, directly or indirectly. . . ." A comparison of the requirements under the two programs reveals that the "substantial interest" in a corporation which would merit espousal of its claims by the United States Government was deemed to be twenty percent of the outstanding stock of any class in the case of Title I and fifty percent of all outstanding stock in the case of Title III of the 1949 Act. This difference between the Title I and Title III claims is not a unique situation. In implementing its policy to espouse claims involving a sub-

stantial United States ownership interest the State Department has applied various definitions to the term "substantial."

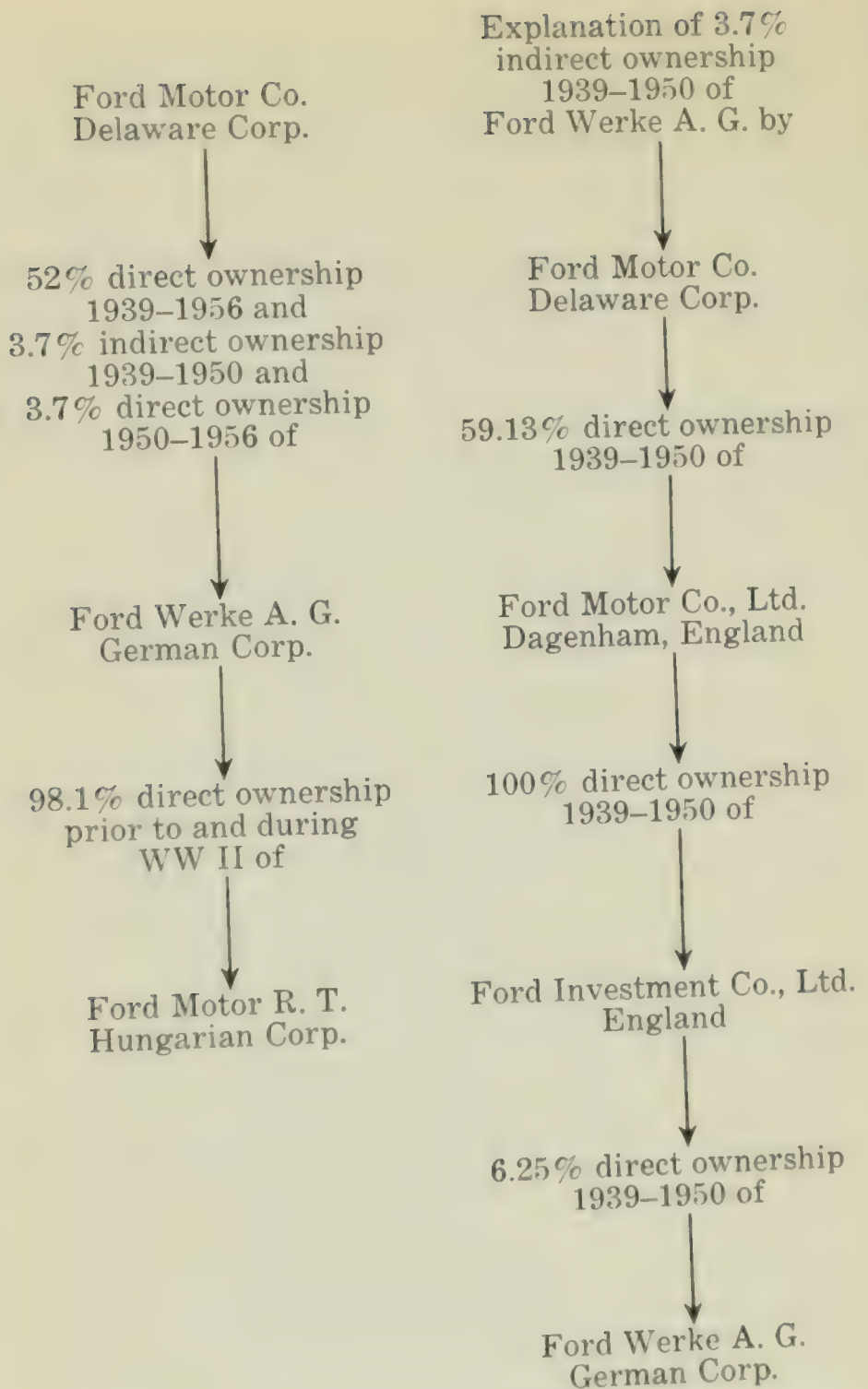
An interesting issue was presented by the claim of the Ford Motor Company against the Government of Hungary. (*Claim of Ford Motor Company*, Claim No. HUNG-20027, Dec. No. HUNG-2116, 10 FCSC Semiann. Rep. 80 (Jan.-June 1959).) The question arose whether Ford, a Delaware corporation, satisfied the eligibility requirements of Section 301(2) of the Act in the light of the fact that during a time pertinent to the claim more than fifty per centum of the outstanding stock of the Delaware corporation was owned by The Ford Foundation, a nonstock, charitable corporation organized pursuant to the laws of the State of Michigan. In reaching an affirmative answer, the Commission considered the complex factual and legal issues of the claim as set forth in the following Panel Opinion No. 14:

SUBJECT: Eligibility as a Claimant of the Ford Motor Company Under the International Claims Settlement Act of 1949.

The Ford Motor Company, a Delaware corporation, has filed with the Commission a claim against the Government of Hungary, pursuant to the provisions of Sections 303(1) and (2) and 311(b) of the International Claims Settlement Act of 1949, as amended by Public Law 285, 84th Congress, approved August 9, 1955, arising out of the failure of the Government of Hungary, to restore or pay war damage compensation for the property of Ford Motor R. T., a subsidiary corporation organized under the laws of Hungary, as required by articles 26 and 27 of the treaty of peace with Hungary; as well as for the failure to pay effective compensation for the nationalization or other taking of the property of Ford Motor R. T. in Budapest, Hungary. The said property consists of a factory and office building.

With respect to claimant's eligibility, it is contended that the Ford Motor Company is a national of the United States within the purview of Section 301(2)(B) of the Act which requires that more than 50% of the outstanding capital stock of this Delaware chartered corporation be owned, directly or indirectly, by natural persons who are nationals of the United States. Moreover, it is contended that at the time the losses were sustained at least 25% of the outstanding capital stock of Ford Motor R. T. was owned, directly or indirectly, by natural persons who were nationals of the United States, within the contemplation of Section 311(b) of the Act.

There follows a schematic diagram which illustrates the extent of the indirect ownership of Ford Motor R. T. by the Ford Motor Company.



Consequently, from September 1, 1939 to the date the claim was filed, Ford Motor Company owned indirectly 54.65% of the outstanding stock of Ford Motor R. T. by virtue of the claimant's ownership of 55.7% of the outstanding stock of Ford Werke A. G.¹

Without prejudice to any future determination by the Commission, it is assumed here that any claimant must be a national of the United States on the date the loss

¹ Details of indirect ownership of the Hungarian corporation by the Delaware corporation extracted from Exhibit C of the claim.

was sustained continuously to the date that the claim is filed under Title III of the International Claims Settlement Act of 1949, as amended.

The Ford Motor Company claim was filed on January 17, 1956. From September 1, 1939 to the date the claim was filed all of the outstanding stock of the claimant parent corporation, was owned by members of the Ford family, their estates, "certain Ford Family interests," directors, officers and employees of the claimant, and the Ford Foundation.² From September 1, 1939 to September 10, 1947, various members of the Ford Family and their estates owned more than 50% of the outstanding stock of the Ford Motor Company. From September 10, 1947 to the date the claim was filed, the Ford Foundation owned more than 50% of the outstanding stock of the Ford Motor Company. All members of the Ford family, their executors and executrices are citizens of the United States. "Certain Ford family interests" are not otherwise identified. "All or almost all" of the directors, officers and employees of the Ford Motor Company are citizens of the United States. The Ford Foundation is a nonstock, charitable corporation organized under the provisions of the Michigan General Corporation Act.³ The Ford Foundation is managed by a Board of Trustees elected by the members of the Foundation. All of the trustees and all of the members of the Ford Foundation are individuals and nationals of the United States.⁴

The fundamental issue to be resolved, then, is the status of the Ford Foundation with respect to the statutory eligibility requirement that stock ownership in relation to the qualification of corporate or stockholder claimants must be by natural persons who are nationals of the United States.⁵

It is axiomatic that the primary object and rule of all interpretation or construction of the words of a statute is the accomplishment of the legislative intent.⁶ It has been said that while interpretation confines one to the content of the statute, construction permits the use of extrinsic aids such as the many documents which pertain to the legislative, administrative and judicial history of the statute. In common usage, however, interpretation and construction are usually understood to have the same significance.⁷ If the words of a statute are clear in meaning and do not lead to repugnant and inconsistent consequences, such words are, of course, evidence of the ultimate legislative intent. In such cases, construction is not required. However, even when the plain meaning does not produce repugnant and inconsistent results, but merely an unreasonable one plainly at variance with

² The first public offering of Ford Motor Company stock was made on January 18, 1956.

³ 15 Michigan Stat. Ann. § 21.1.

⁴ Details of direct ownership of claimant extracted from Exhibit A of the claim.

⁵ Sections 301(2)(B) and 311(b) of the International Claims Settlement Act of 1949, as amended.

⁶ *Vermilya-Brown Co., Inc. v. Connell*, 335 U.S. 377 (1948).

⁷ *U.S. v. Keital*, 211 U.S. 370 (1908).

the policy of the legislation as a whole, the legislative purpose is followed rather than the literal words.⁸ In a determination of such purpose extrinsic aids to construction are used.

The primary technique in the determination of statutory language is the rule of literalness, or, as it is sometimes referred to, the plain meaning rule. When this rule is employed to determine the meaning of the words of a statute, it is, of course, essential to the proper application of the rule that the context be considered. In other words, the meaning of the words when read together with the rest of the words of the pertinent section of the Act and the other sections of the Act as well must be determined. If such a reading leads to repugnant and inconsistent results construction is required.

Before consideration is given to the Ford case, it is pertinent to inquire with respect to the eligibility under Title III of the Act of the American National Red Cross which operates under a charter granted by Congress in 1905, and the Sofia American Schools, Incorporated, a nonstock corporation chartered in Massachusetts in 1926. Resolution of the issue of eligibility in these cases, where the charitable corporation is the claimant, will have distinct bearing in the Ford case where the charitable corporation holds considerable of the capital stock of the claimant.

Section 301(1) defines the term "person" to include a "natural person" but does not, in turn, define the term "natural person." It is this latter term, however, which is employed in Section 301(2) (A) and (B) and 311(b) and which leads to difficulty in the matter of nonstock, eleemosynary corporations.

Section 301(1) also includes a partnership, association, other unincorporated body, *corporation*, or body politic in the term "person." Thus, it is manifest that a corporation is a person within the ambit of the statute. It is for the Commission to determine if a further extension was intended by the Congress, in other words, if a corporation, and more specifically a nonstock charitable corporation, is a natural person.

Section 301(2) defines a national of the United States as,

(A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and

(B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity.

With respect to a corporation, it is observed that it is

⁸ *Markham v. Cabell*, 326 U.S. 404 (1945).

contemplated that natural persons own capital stock or other beneficial interest in the corporation.

The American National Red Cross is a corporation governed by a 50 member Board of Governors of whom 30 are elected by the 3700 local chapters, 8 are appointed by the President of the United States, and 12 are elected by the Board itself as members-at-large. Sofia American Schools, Inc. is a Massachusetts charitable corporation which is governed by a Board of Trustees.

The American National Red Cross and the Sofia American Schools, Inc. are not within the literal definition of a corporation or other legal entity which is a national of the United States inasmuch as they are nonstock corporations and natural persons have no beneficial interest in either corporation. Are the American National Red Cross and the Sofia American Schools, Inc., then within the meaning of Section 301(2)(A) of the Act, nationals of the United States by virtue of being natural persons?

Clearly, here is a situation where the literal reading of the statute leads to unreasonable if not repugnant and inconsistent results which demand statutory construction to determine the intent of the Congress.

One of the better extrinsic aids employed in statutory construction is a comparison of the various prints of a bill as it is carried through the executive and legislative branches of the government to enactment. With respect to claims against Bulgaria, Hungary and Rumania, the draft of the proposed legislation, which was submitted by the Foreign Claims Settlement Commission to the Congress and which ultimately became Public Law 285, provided that the term,

“nationals of the United States” includes (A) persons who are citizens of the United States, and (B) persons, who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

While there had been three revisions of the original draft of the proposed legislation by the executive branch before submission to the Congress, the definition of a national of the United States was not altered. This definition originated in Section 2 of the International Claims Settlement Act of 1949.

On March 4, 1955 Senator George introduced S. 1310, 84th Congress, in the Senate. This bill retained the definition of “nationals of the United States” as originally set out in Section 2 of the International Claims Settlement Act of 1949. No action was taken on S. 1310, the companion bill of H.R. 6382 which ultimately became Public Law 285, 84th Congress, and which added Titles II and III to the Act.

There were two committee prints of H.R. 6382, which was introduced in the House on May 19, 1955 by Mr. Richards, Chairman of the Committee on Foreign Affairs. Both committee prints adopted the definition of

"nationals of the United States" which had been submitted by the executive branch. However, as introduced, and as passed in the House and the Senate, the definition of a "national of the United States" was changed to the meaning now found in Section 301(2) of the Act.

It is manifest that this change was not effected to exclude charitable corporations chartered in the United States. Rather, the phraseology, as adopted by the Congress, is in harmony with the traditional practice of the United States in requiring a "substantial" American interest in a corporation before it will espouse an international claim.⁹ Consistent with this underlying philosophy of the legislation it could scarcely be contended that American charitable corporations devoted to humanitarian works and the teaching and dissemination of American language, ideals and culture in foreign lands, were intended to be ineligible claimants because of a failure to come within the highly technical definition of a corporation which is a national of the United States. The general purpose and import of the statute requires, therefore, that nonstock charitable corporations be encompassed within the term "natural person."

That the term "natural person" includes a corporation is not without precedent in the law even though the precedents are distinguishable from the instant case. The Illinois Banking Act provides that "no natural person or natural persons, firm or partnership shall transact the business of banking or the business of receiving money upon deposit, or shall use the word 'Bank' or 'Banker' in connection with said business."¹⁰ Illinois law further provides that, "'Person' or 'persons' as well as all words referring to or importing persons, may extend and be applied to bodies politic and corporate as well as individuals."¹¹ Where a West Virginia corporation appealed an order entered by the Secretary of State canceling the license of the corporation to do business in Illinois, the Appellate Court of Illinois, Third District, in affirming the judgment of the lower court and the order of the Secretary of State, held that the term "natural person" or "natural persons" used in the Banking Act extended to and applied to "bodies politic" and "corporate."¹²

In an action by an individual engaged in the operation of a motor passenger service against a Public Service Commission to enjoin the enforcement of an order charging the plaintiff with the cost of a proposed investigation and examination of his business under the provisions of a statute, it was held that the term "public service or public utilities corporation" included natural persons who operate public utilities.¹³

⁹ V. Hackworth, *Digest of International Law* 830 (1943).

¹⁰ Smith-Hurd Ann. St. Ch. 16½ § 16.

¹¹ Id., Ch. 164 § 1.05.

¹² *Patients Investment Association v. Emerson, Secretary of State*, 235 Ill. App. 518, 526 (1934), reversed on other grounds, 318 Ill. 548, 149 N.E. 90 (1926).

¹³ *Greenall v. Louisiana Public Service Commission*, 186 La. 295, 172 So. 163 (1937).

Moreover, many courts have construed the word "corporation" as used in a statute to include individuals whenever it has appeared that the legislative intent required it.¹⁴

Turning to another facet of the legislative history of Title III of the Act, it is noteworthy that, with respect to the Ford claim, Chairman Gilliland, at the request of the Senate Committee on Foreign Relations, furnished the Committee with the names of the 20 then known claimants asserting the largest claims.¹⁵ The list contained the name of the Ford Motor Company as a claimant for the sum of \$5.1 million for war damage and nationalization claims.

In addition, the Congress was aware of the claim of the Sofia American Schools, Inc. At no time, however, during the Senate and House hearings on H.R. 6382 was a question raised relative to the eligibility of this or any other charitable corporation. In fact, considerable interest, favorable in character, was expressed relative to the University by members of the Senate Foreign Relations Committee while considering the bill in open session.¹⁶

In light of the foregoing it is the position of the Office of the General Counsel that charitable corporations, such as the Ford Foundation, the American National Red Cross and Sofia American Schools, Incorporated, are within the ambit of the term "natural person" as used in Sections 301(1) and (2) and 311(b) of the International Claims Settlement Act of 1949, as amended. Accordingly, it is recommended that if, on development by the Settlement Division, the evidence sustains the qualification requirements of Section 311(b), a determination that the Ford Motor Company is an eligible claimant under Title III of the International Claims Settlement Act of 1949, as amended, be entered.

A different question regarding the nationality requirement, as affected by Section 311(b) of the 1949 Act, was presented by claims of individuals having stockholder interests in corporations which did not qualify as nationals of the United States. This is discussed in the annotations to *Claim of Niagara Share Corporation*, appearing at page 184.

Nationality requirements: Trusts.—The principle that nationality requirements must be applied to the beneficial owners of claims and not to the record owners thereof was discussed and applied with respect to Title I in the *Claim of Siegfried Arndt*, appearing at page 22. The reasoning underlying that holding was deemed persuasive by the Commission and the policy was incorporated in the case of Title III claims also. Accordingly, where the record disclosed that the *cestuis que trust* whom claimant represented were nonnationals of the United States, the Com-

¹⁴ *Van Dyke v. Members of the Corporation Commission of the State of Arizona*, 244 U.S. 39 (1917).

¹⁵ Hearings on H.R. 6382 Before the Senate Committee on Foreign Relations, 84th Cong., 1st Sess. 67-70 (1955).

¹⁶ Hearings, *supra* note 15 at 71-82; and Hearings on H.R. 6382 Before the House Committee on Foreign Affairs, 84th Cong., 1st Sess. 83-85 (1955).

mission was constrained to hold that the claim did not qualify as that of a national of the United States within the meaning of Section 303 of the Act. (*Claim of American Security and Trust Company, Trustee Under the Will of Carl F. Jeansen, Deceased*, Claim No. HUNG-20540, Dec. No. HUNG-51.)

The question of whether the established rule requiring a claim which is national in character at its origin to remain such thereafter to the date of filing should be applied to a trust was a core issue in a claim against the Government of Bulgaria under Section 303(3). An American national who acquired bonds of the Government of Bulgaria prior to the statutory date, April 24, 1941, established a testamentary trust which incorporated the subject bonds as part of the corpus. He died in October 1941 and the record of the claim disclosed that none of the beneficiaries of the trust had acquired United States nationality before 1946. Applying the rule that the eligibility requirements must be applied to the beneficiaries of a trust, the Commission determined that there was a break in the ownership of the claim by United States nationals during the required period, and ruled that the claim did not qualify as that of a United States national. In so ruling the Commission adverted to the fact that it is not a condition precedent to the application of the rule of continuous national ownership of a claim that the claim can be effectively asserted at all times during the subject period. (*Claim of The Hanover Bank, et al.*, Claim No. BUL-1181, Dec. No. BUL-115, Final Decision, 10 FCSC Semiann. Rep. 16 (Jan.-June 1959).)

Expatriation.—As was illustrated in the discussion of the nationality requirements in Title I claims, an allied issue in this area is that of expatriation, that is, the loss of one's nationality status. Reference is made to the basic United States statutes, the policy considerations incorporated therein, and court decisions applicable to this issue in the *Claim of Jerko Bogorich, et al.*, appearing at page 24.

Where a claimant failed to overcome the presumption of expatriation established by the Act of March 2, 1907 (34 Stat. 1228) for continuous residence in the country of his origin (*Claim of Paul Bodor*, Claim No. HUNG-20501, Dec. No. HUNG-2022), or where claimant expatriated herself under Section 401(e) of the Nationality Act of 1940 (54 Stat. 1168) by voting in a national election in Hungary (*Claim of Gizella M. Kozdy-Reich*, Claim No. HUNG-22361, Dec. No. HUNG-1143, 10 FCSC Semiann. Rep. 52 (Jan.-June 1959)), the Commission was constrained to deny recovery under Title III.

Unusual factual situations were presented by other claims filed pursuant to Title III, and called for the application of other sections of the pertinent statutes regulating nationality. The record before the Commission in one claim indicated that the owner of certain claimed property had been employed from June 1932 to November 1944 by the City of Budapest, Hungary. Based upon this evidence and information supplied by the Hungarian Minister of Trade that foreigners were not employed in claimant's position during that period, the Commission determined that the said owner of the property had been expatriated pursuant to Section 401(d) of the Nationality Act of 1940 (54 Stat. 1137)

which provided that a United States national would lose this status by accepting or performing duties of employment of a political subdivision of a foreign government if only nationals of such state were eligible for these positions. An alternate ground for denial of the claim was expatriation arising from continuous residence in the country of origin for the requisite statutory period. Upon consideration of the evidence produced at a hearing, a report of the State Department Board of Review which stated that the record did not support the conclusion that the post occupied by the deceased was one for which only Hungarian nationals were eligible or that deceased ever was expatriated, the Commission issued an award in the claim, stating that "in an expatriation case, the burden of proof is on the government, and the evidence must be clear, unequivocal and convincing." (*Claim of Estate of Frederick Jehl, Deceased*, Claim No. HUNG-27013, Dec. No. HUNG-1164, Final Decision, 10 FCSC Semiann. Rep. 69 (Jan.-June 1959).)

A claimant against the Government of Rumania under Title III lost her status as a United States national by reason of her marriage in 1903 to a subject of Great Britain, and did not reacquire United States nationality until her naturalization in 1949. Accordingly, her portion of the claim was denied because it was not established that the property on which it was based was owned by a national of the United States at the time of loss and that the claim which arose therefrom was owned by a United States national continuously thereafter. (*Claim of Martha McIntire, et al.*, Claim No. RUM-30562, Dec. No. RUM-539, 10 FCSC Semiann. Rep. 117 (Jan.-June 1959).)

In a similar claim, a female who was expatriated prior to World War II by marriage took an oath of allegiance when preparing to re-enter the United States in 1948. Despite the fact that she was refused permission to register as a United States citizen, she contended that the aforesaid oath conferred United States nationality on her pursuant to the Act of June 25, 1936 (49 Stat. 1917). In its decision the Commission pointed out that the referenced law had been repealed by the Nationality Act of 1940 (54 Stat. 1137) which was effective as of 1941, a date prior to the taking of the oath of allegiance, and that pursuant to the 1940 Act a woman in claimant's situation reacquired United States nationality on the taking of an oath if it were established that her marital status with the alien had terminated. Because this condition had not been satisfied, claimant retained her status as a nonnational and the claim was denied for the reason that the nationality requirements of Section 303(3) of the 1949 Act were not satisfied. (*Claim of Chase Manhattan Bank*, Claim No. HUNG-21792, Dec. No. HUNG-533, 10 FCSC Semiann. Rep. 36 (Jan.-June 1959).)

NIAGARA SHARE CORPORATION**Against the Government of Rumania**

Claims based on direct stock interests in nationalized corporations in Bulgaria, Hungary or Rumania, otherwise compensable under Section 303(2), Title III of the 1949 Act, allowed without regard to per centum of stock interests vested in nationals of the United States at the time of loss, pursuant to Section 311(b) as amended by Public Law 85-604 of August 8, 1958.

Value of stock interests in nationalized corporations as of date of nationalization determined on basis of balance sheets and financial statements of such entities, other appropriate information concerning their assets and operations, as well as stock market quotations.

PROPOSED DECISION

This is a claim under the provisions of the International Claims Settlement Act of 1949, as amended, against the Government of Rumania, by NIAGARA SHARE CORPORATION, a corporation organized under the laws of the State of Maryland, for the failure of the said government to pay effective compensation for the nationalization of corporations in which claimant had a stock interest. Part of the claim is based upon an alleged bank account of 173,800 lei with the "Temesvar Bank & Trading Corporation."

Claimant asserts that it owns the following shares of stock: 900 in "Banca Agrara, Oradea," 1500 in "Banca Victoria S.A.," 750 in "Banater Bankverein A.G.," 350 in "Kronstadter Allgemeine Sparkasse," 1000 in "Polgari Takarek Penztar R.T.," 1850 in "Temesvar Bank and Trading Corporation," and 3750 in "Vereignite Bank and Sparkasse."

It is clear that in a claim based on ownership of a stock interest in a corporation, which itself is not a United States national and hence not a qualified claimant under the Act, one of the conditions which must be met before claimants can establish entitlement to an award under Section 303 of the Act, is that which is imposed by Section 311(b) of the Act, which provides as follows:

A claim based upon an interest, direct or indirect, in a corporation or other legal entity which directly suffered the loss with respect to which the claim is asserted, but which was not a national of the United States at the time of the loss, shall be acted upon without regard to the nationality of such legal entity if at the time of the loss at least 25 per centum of the outstanding capi-

tal stock or other beneficial interest in such entity was owned, directly or indirectly, by natural persons who were nationals of the United States.

The reports of the Committees of Congress which considered the legislation which, when enacted, incorporated 311(b) into the International Claims Settlement Act of 1949, leave no doubt that Section 311(b) was intended to exclude from the scope of the Act those claims which are based on interests in non-national corporations or other legal entities which were not at least 25% owned by nationals of the United States. In describing the intended effect of Section 311(b), the Report of the House of Representatives' Committee on Foreign Affairs stated in part as follows:

Accordingly, the bill provides that awards based on such indirect interests will be made only if, at the time of the loss at least 25 per cent of the stock or other beneficial interest in the corporation which suffered the loss was owned directly or indirectly by individual United States nationals.¹

Similarly, the Senate Committee on Foreign Relations expressed its understanding of the intent which was manifested by the inclusion of Section 311(b) in the Act in its report as follows:

Its primary purpose, however, was to eliminate claims based upon a holding of 1 or 2 shares which would hardly justify the expense and effort of processing.²

The shares held by the claimant represent but a small fraction of the total capitalization of the corporations in question. Claimant has not offered evidence of any ownership interests in the corporations other than its own in order to establish that at least 25% of the corporations was owned by natural persons who were nationals of the United States. Moreover, it does not appear, from information available to the Commission, that the ownership interests in the instant corporations of nationals of the United States approximated anywhere near 25% of the total capitalization of the corporations. Thus, it must be concluded that claimant has not established that at least 25% of the corporations in question was owned at the time of loss by natural persons who were nationals of the United States, and that, therefore, this claim is not compensable.

Accordingly, for the foregoing reasons, this part of the claim is denied.

That part of the claim which is based upon an alleged deposit of 173,800 lei with the "Temesvar Bank and Trading Corporation" is denied for the reasons specified in the attached Pro-

¹ H.R. Rep. No. 624, 84th Cong., 1st Sess. 17, 18 (1955).

² S. Rep. No. 1050, 84th Cong., 1st Sess. 7 (1955).

posed Decision, No. RUM-314, *In the Matter of the Claim of Ilie Muresan* (RUM-30211).

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D.C.

March 6, 1958.

SUPPLEMENTAL PROPOSED DECISION

This is a claim against the Government of Rumania under Section 303(2) of the International Claims Settlement Act of 1949, as amended, by NIAGARA SHARE CORPORATION, a national of the United States within the meaning of Section 301(2)(B) of the Act, for the taking of property in Rumania.

The claim was denied by Decision No. RUM-364 of March 6, 1958, but subsequently was reopened solely for the purpose of making a redetermination of that portion of the claim based upon stock interests pursuant to the provisions of Section 3 of Public Law 85-604, approved August 8, 1958, amending Section 311(b) of the Act.

The Commission finds that the claimant owned 350 shares of stock in Cassa Generala de Pastrare, Brasov, 1500 shares of stock in Banca Victoria S.A., Arad, 1850 shares of stock in Banca Timisoarei, and 750 shares of stock in Bancile Banatene Unite, Timisoara, which corporations were nationalized without compensation to the stockholders by the Government of Rumania pursuant to Law No. 119 of June 11, 1948 (Monitorul Oficial No. 133 bis.).

In computing the values of the shares of stock of Rumanian corporations at the time of their nationalization, it being impossible to make on-the-spot appraisals, the Commission has considered quotations on various European stock exchanges, financial data from Compass and other publications, balance sheets and operating statements, book values, and advice obtained from governmental and financial sources in foreign countries, as well as information provided by various claimants with respect to prices paid for the shares of stock and their values. On the basis of all the evidence and information available, the Commission finds that the values of the shares of stock of Cassa Generala de Pastrare, Brasov, Banca Victoria S.A., Arad, Banca Timisoarei, and Bancile Banatene Unite, Timisoara, at the time of

nationalization of the corporations, were \$1.00, \$1.00, \$0.25, and \$1.25 per share, respectively.

The Commission finds, therefore, that the value of claimant's stock interest in such corporations was Three Thousand Four Hundred Thirty-seven Dollars and Fifty Cents (\$3,437.50), and concludes that claimant is entitled to compensation under Section 303(2) of the Act.

A portion of the claim is based upon 900 shares of stock of Banca Agrara, Oradea, 1000 shares of stock of Cassa de Pastrare Civila, Oradea, and 3750 shares of stock of Bancile Fuzienate si Cassa de Eoon, Oradea. Claimant has been unable to submit evidence which fully substantiates its allegations as to the extent of the loss with respect to these shares of stock. Nevertheless, the Commission, not being bound by the usual rules of evidence, is persuaded that the claimant owned stock interests in these said corporations which were taken within the meaning of Section 303(2) of the Act apparently in 1948, and that no compensation has been paid therefor by the Government of Rumania. Denial of the claim for lack of corroboration under such circumstances, would not, in the opinion of the Commission, be an act of justice. On the other hand, the absence of reliable evidence precludes an award of the full amount claimed.

The Commission finds that the value of claimant's stock in the said three corporations was One Thousand Four Hundred Twelve Dollars and Fifty Cents (\$1,412.50), and concludes that claimant is entitled to compensation under Section 303(2) of the Act for this loss.

AWARD

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, an award is hereby made to NIAGARA SHARE CORPORATION in the amount of Four Thousand Eight Hundred and Fifty Dollars (\$4,850.00), plus interest thereon at the rate of 6% per annum from June 11, 1948 to August 9, 1955, the effective date of the Act, in the amount of Two Thousand Eighty-four Dollars and Sixty-seven Cents (\$2,084.67).

Payment of any part of this award shall not be construed to have divested the claimant herein or the Government of the United States, on its behalf, of any rights against the Government of Rumania for the unpaid balance of the claim, if any.

Dated at Washington, D.C.

March 9, 1959.

Nationality of corporations—Stockholder's claims.—Under Section 301(2) of Title III of the International Claims Settlement Act of 1949, as amended, a corporation which was organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, was deemed a "national of the United States" if natural persons who were nationals of the United States owned, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. If the corporation qualified as a "national of the United States," the corporation was the proper party claimant, and no award could be made to any other person with respect to such claim. (Section 311(a) of Title III of the Act.)

Many claims were filed by United States nationals who were stockholders in corporations which did not themselves qualify as nationals of the United States. The Commission originally took the position that if the corporation which directly suffered the loss was not a national of the United States, and therefore ineligible, Section 311(b) provides that United States nationals who *directly or indirectly* owned stock in such corporation could be compensated only if 25 per centum or more of the stock or other beneficial interest was owned directly or indirectly at the time of loss by natural persons who were nationals of the United States. Accordingly, the portion of the instant claim based upon interests in nationalized corporations was denied for failure to establish 25% ownership of the enterprises by United States nationals. Likewise, a claim filed by a shareholder for his interest in *Steaua Romana*, a nationalized Rumanian corporation, was denied for claimant's failure to prove 25% United States ownership interest in such corporation. (*Claim of Eugene L. Garbaty*, Claim No. RUM-30250, Dec. No. RUM-13, 10 FCSC Semiann. Rep. 93 (Jan.-June 1959).)

It had been argued that under the Rumanian law concerning the nationalization of industrial concerns, both the stockholder shares and the corporate assets were taken simultaneously. It was contended that Section 311(b) does not apply to the situation in which stock in a Rumanian corporation was taken because the taking of stock gave rise to a direct claim rather than one based on an interest in a corporation; and it was urged that the requirement of a 25% United States stock interest applies only to stockholders in a non-Rumanian foreign corporation which in turn owned property in Rumania.

The issue was resolved by Section 3 of Public Law 85-601, 72 Stat. 527 (1958), amending Section 311 of the International Claims Settlement Act of 1949, as amended, so that a claim based upon *direct* ownership interest in a corporation nationalized, liquidated, or otherwise taken would be allowed without regard to the percentage of ownership vested in the claimant. The effect of this amendment was that the prerequisite of 25% United States interest applied only in cases where the claim was based upon *indirect* ownership interest in the corporation which sustained the loss, such as ownership of stock in a Belgian corporation which in turn owned stock in a Bulgarian, Hungarian, or Rumanian corporation.

Pursuant to the congressional mandate contained in Section

3(b) of Public Law 85-604 (*supra*) all claims which had been denied under Subsection (b) of Section 311 of the Act were reconsidered by the Commission and awards were granted where appropriate, as in the Supplemental Proposed Decision in the *Niagara Share Corporation* claim.

The 25% United States ownership interest was required to have been in *natural persons* who were nationals of the United States. Of the 235,687 outstanding shares of a claimant corporation, the Mergenthaler Linotype Company, 3,656 shares were held by nonnationals, 28,808 shares by and for International Linotype Ltd., London, and the remainder by United States nationals. Claimant argued that the block of 28,808 shares held by and for International Linotype Ltd. should be considered non-foreign because they were controlled by claimant through its British subsidiary, Linotype and Machinery Ltd. Since claimant did not respond to requests for additional information and evidence to justify its allegation that the 28,808 shares held by International Linotype Ltd. should be considered as owned at the time of loss by natural persons who were nationals of the United States, the Commission ruled that only 203,223 of claimant's shares of stock, or 86.226%, could be considered as owned by natural persons who were nationals of the United States. The net result of such ruling was that claimant's ownership interest in the nationalized corporation First Hungarian Type Foundry, owned indirectly through claimant's German subsidiaries the Mergenthaler Setzmaschinen-Fabrik and D. Stempel, A.G., was found to be 22.701%, or less than 25%, and the claim was denied. (*Claim of Mergenthaler Linotype Company*, Claim No. HUNG-12860, Dec. No. HUNG-1921, 10 FCSC Semiann. Rep. 64-66 (Jan.-June 1959).)

Value on date of loss.—Awards under Section 303(2) of the 1949 Act for the nationalization or other taking of property in Bulgaria, Hungary, and Rumania were based upon the value of the property at the time of loss. Recognizing that the determination of value would prove difficult in many cases, the Commission endeavored to assist claimants through independent investigation and accumulation of standards for evaluation of property of various types. Some of the elements considered by the Commission in this respect were purchase price or offers to purchase, age and condition of the property, type of construction, location and surroundings, appraisals by experts and by individuals having personal knowledge of the facts, rental income, and values determined for similar types of property in the same or adjacent areas.

Claims or portions of claims based upon indirect damages, such as loss of earnings, anticipated profits, and loss of rent, generally were denied as speculative or not reasonably certain and susceptible of accurate determination. (*Claim of Anna Ide*, Claim No. RUM-30441, Dec. No. RUM-375, 10 FCSC Semiann. Rep. 113 (Jan.-June 1959); and *Claim of Constantine Halkides*, Claim No. HUNG-20705, Dec. No. HUNG-1294.) In some instances evidence of value was rejected in whole or in part. In a claim based upon compulsory liquidation of a business in Rumania, the Commission held that it was necessary for claimant to establish that the amount he received for the property was less than the actual

value thereof. The report of an asserted expert was considered, but the Commission found that the values which he placed upon machinery, equipment and goods were based upon hearsay rather than upon his own knowledge. The claim was denied for failure of proof. (*Claim of Jacob J. Roder*, Claim No. RUM-30337, Dec. No. RUM-801, 10 FCSC Semiann. Rep. 124 (Jan.-June 1959).)

Where a claim was based upon direct or indirect ownership of an interest in a nationalized corporation, the amount of the award depended upon an evaluation of the enterprise at the time of loss, and claimant's interest therein was calculated as the proportion of his shareholding to the total number of shares outstanding. In computing the value per share of stock of corporations at the time of their nationalization, it being impossible to make on-the-spot appraisals, the Commission considered quotations on various European stock exchanges, financial data from *Compass* (Compassverlag, Wien, Austria) and other publications, balance sheets and operating statements, book values, and advice obtained from governmental and financial sources in foreign countries, as well as information provided by various claimants with respect to prices paid for the shares of stock and its value.

In establishing the value of certain subsoil reserves of crude oil and gas liquids, a claimant proposed the analytical or engineering method of appraisal which is widely accepted and used by the oil industry in estimating the value of hydrocarbon reserves in the United States and throughout the world. Under this method, claimant calculated the "present worth" value of the reserves at the time of nationalization at \$17,483,522.00. In applying the method, claimant assumed that all of the leases were valid, used pre-World War II cost experience "adjusted" to 1948, figured sales prices on the basis of a competitive free market, and projected these costs and prices to 1978 and 1983. Additionally, claimant assumed, for the remaining life of the leases, a government tax of 50% plus 11% royalty.

The Commission recognized the validity of the method adopted by the claimant, but was not entirely persuaded that all of the assumptions as to costs, prices, and taxes, and particularly the reliance upon their continuance throughout the life of the leases, should be accepted without qualification. The Commission was not convinced that in arriving at the market value at the date of nationalization, a buyer in a competitive market would be willing to pay the figure asserted by the claimant. The Commission concluded that a discounting or downward adjustment of the claimant's figure was indicated and, accordingly, the amount of \$12,240,000.00 was allowed for the loss sustained on account of the nationalization of claimant's oil and gas reserves. (*Claim of Standard Oil Company*, Claim No. RUM-30140, Dec. No. RUM-813, 10 FCSC Semiann. Rep. 128-130 (Jan.-June 1959).)

Unlike the Yugoslav and Panama claims programs in which payments on account of awards were made from funds received as a result of agreements between the Governments of those countries and the United States, payments on awards under Title III of the 1949 Act were made from the proceeds of enemy assets seized during World War II, and the Commission was soon aware of the fact that available funds would be insufficient for payment

in full of anticipated awards against Bulgaria, Hungary, or Rumania. The *Niagara* decision illustrates the practice adopted by the Commission of adding a final paragraph after the statement of award to the effect that partial payment of the award would not divest the claimant or the United States Government of any rights against the country concerned for the unpaid balance.

In the Matter of the Claim of

Claim No. BUL-1094
Decision No. BUL-280

GEORGE H. EARLE, III

UNITED STATES OF AMERICA

Against the Government of Bulgaria

Claims found valid under Section 303, Title III of the 1949 Act allowed only to extent of uncompensated losses. United States of America deemed subrogated by virtue of payments pursuant to private laws on account of claims allowable under Section 303. Stipulations between the United States and claimants thus paid govern extent of their respective interests.

Awards under Section 303(1) not increased by interest because they are limited to "two-thirds of the loss or damage actually sustained."

PROPOSED DECISION

This is a claim against the Government of Bulgaria under Section 303(1) of the International Claims Settlement Act of 1949, as amended, for \$37,933.00, by GEORGE H. EARLE, III, a national of the United States since his birth in the United States on December 5, 1890, for the loss of personal property in Bulgaria during World War II. On June 25, 1958, the UNITED STATES OF AMERICA intervened as co-claimant.

The Commission finds that the claimant, GEORGE H. EARLE, III, owned certain personal property which was lost or damaged as a result of World War II and that no compensation for such loss has been paid by the Government of Bulgaria. The Commission further finds that the loss or damage actually sustained amounted to \$27,210.00 and concludes that claimant, GEORGE H. EARLE, III, is entitled to an award under Section 303(1) of the Act in the amount of \$18,140.00 since under this Section awards are limited to two-thirds of the loss or damage actually sustained.

On or about June 14, 1954, the Government of the United

States, under Private Law No. 417, 83rd Congress, paid to the claimant, GEORGE H. EARLE, III, the sum of \$12,830.00 in consideration of losses of personal property in Bulgaria while in the diplomatic service of the United States. Claimants have agreed by *Stipulation of Settlement* that the United States of America shall receive 34% of the proceeds of any award herein made by the Foreign Claims Settlement Commission and that GEORGE H. EARLE, III shall receive 66% thereof.

AWARD

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, this claim is allowed and an award is made in the amount of \$18,140.00, in which award the interest of GEORGE H. EARLE, III is 66% or \$11,972.40, and the interest of the UNITED STATES OF AMERICA is 34% or \$6,167.60.

Payment of any part of this award shall not be construed to have divested GEORGE H. EARLE, III herein, or the Government of the United States on his behalf, of any rights against the Government of Bulgaria for the unpaid balance of the claim, if any.

Dated at Washington, D.C.
December 15, 1958.

Subrogation. Compensation received from other sources.—Under Section 303(1), Title III, of the International Claims Settlement Act of 1949, as amended, the Commission determined the validity of war damage claims of nationals of the United States and, where applicable, made awards limited to two-thirds of the loss or damage actually sustained.

In a few cases, such as in the instant claim, under private laws passed for the relief of the claimants prior to the enactment of Title III of the Act, the Government of the United States paid compensation for a portion of war damage sustained in Bulgaria, Hungary and Rumania to individuals who served in these countries as employees of the United States. The claimants filed claims with the Commission for the uncollected portion of the loss, and the Government of the United States joined in the proceedings before the Commission as a co-claimant. The Commission took notice that the claimants and the United States Government stipulated that the proceeds of the award made by the Commission should be divided between the claimants and the Government by a certain percentage: in the instant claim by payment of 66% of the proceeds to the claimant and of 34% of the proceeds to the Government.

The Commission held that both the claimant and the United States Government were entitled to awards, the latter under the principle of subrogation, having made payment without previous legal obligation for the benefit of the claimant. In view of the stipulations entered into between the claimant and the Government, the award, limited to two-thirds of the actual loss, was divided between the claimant and the Government at the ratio of 66% for the claimant and 34% for the Government.

In a similar claim, the same proportion of 66% for the claimant and 34% for the Government was stipulated, and the awards were so granted. (*Claim of Martin Meadows, et al.*, Claim No. BUL-1059, Dec. No. BUL-279.) In another claim, the proportion had been stipulated at the ratio of 60% for the claimant and 40% for the Government and the awards were made in that proportion. (*Claim of Robert Berry Macatee*, Claim No. HUNG-22253, Dec. No. HUNG-1701.)

Where the record indicated that claimant had been compensated fully for his wartime loss under an order of the Office of Alien Property, his claim under Title III of the Act was denied. (*Claim of Eugene Agoston*, Claim No. HUNG-20237, Dec. No. HUNG-651, 10 FCSC Semiann. Rep. 42 (Jan.-June 1959).)

In one case, claimant's property was taken in 1939 by virtue of condemnation proceedings instituted by the Government of Hungary. In 1940 the Government offered payment for this property taken under eminent domain, but claimant refused the offer because the Hungarian Government was not willing to make payment in the United States. The Commission held that the prewar tender of adequate compensation in domestic currency was sufficient to satisfy the requirement under international law that effective compensation be paid for the taking of property, and the claim was denied. (*Claim of Robert Ferdinand Garrow*, Claim No. HUNG-22048, Dec. No. HUNG-2107, 10 FCSC Semiann. Rep. 79 (Jan.-June 1959).)

On the other hand, where in 1947 the Hungarian Government expropriated real property and deposited a sum of domestic currency in a blocked account to the credit of the claimant as compensation for the taking of the property, the Commission found that the amount of compensation thus paid was less than the value of the property, and held that claimant was entitled to an award for the amount of loss thereby sustained. (*Claim of Gladys Moore Vanderbilt Szechenyi*, Claim No. HUNG-21305, Dec. No. HUNG-2124, 10 FCSC Semiann. Rep. 84 (Jan.-June 1959).)

In 1926 the Government of Bulgaria issued certain dollar bonds bearing 7% interest, payable semiannually until the maturity date of January 1, 1967. The interest on the bonds for the years 1940 and 1941 was paid at a reduced rate, but claimant accepted such reduced payments and surrendered the respective coupons to the Government of Bulgaria. The Commission held that claimant was entitled only to the payment of the unpaid coupons which became payable prior to September 15, 1947, and that he forfeited his right to receive the full amount of interest for coupons he had surrendered in accepting payment at a reduced interest rate. (*Claim of Anthony Geraci, Jr.*, Claim No. BUL-1040, Final Dec.

No. BUL-2, 10 FCSC Semiann. Rep. 14 (Jan.-June 1959).) On the question of limitation to amounts which became payable prior to September 15, 1947, see *Claim of Arthur Zentler*, appearing at page 244.

There have been other sources from which claimants occasionally were able to obtain compensation for their losses. This was the case in a claim where the owner of a nationalized building in Sofia, Bulgaria, filed a claim with the Swiss Government's Commission of Indemnification for Nationalization pursuant to an agreement concluded between Switzerland and Bulgaria for compensation for nationalized property. Claimant obtained an award from the Swiss Commission but, nevertheless, also filed a claim in the United States. The claim was denied inasmuch as claimant in accepting the Swiss award executed a release of the claim for the taking of the building. (*Claim of Sophie J. Guggenheim*, Claim No. BUL-1220, Dec. No. BUL-332, 10 FCSC Semiann. Rep. 25 (Jan.-June 1959).)

Interest on awards.—At the outset of this claims program it was necessary for the Commission to determine whether awards should include interest on the amount of the loss. A study made on this subject by the office of the General Counsel of the Commission prior to the adjudication of claims, resulted in the following memorandum of law with recommendations presented to the Commission:

Sections 303, 304, and 305, Title III, of the International Claims Settlement Act of 1949, as amended,¹ alike provide that the Commission shall determine claims in accordance with applicable substantive law including international law.

The general rule in international law is that interest shall be allowed. As stated by one authority, "Interest, according to the usage of nations, is a necessary part of a just national indemnification."² The common law rule prohibiting interest on claims against a sovereign is not applicable where one government makes claims against another government.³

International commissions and boards have generally included interest as part of awards.⁴ The Franco-American Commission issued decisions allowing interest "Upon indemnities on account of requisitions and international offenses," and "Upon indemnities on account of eventual contractual debts for a certain amount and for forced loans."⁵ The subject of interest received special attention from the Mixed Claims Commission, United States and Germany, which laid down the following "Rules Governing Damages In The Nature of Interest":⁶

1. The measure of compensation will include interest
"In all claims for losses wherever occurring based on

¹ 69 Stat. 579 (1955); 22 U.S.C. § 1621 (1961).

² VI Moore, *International Law Digest* § 1069 (1906), citing other authorities.

³ *Ibid.*

⁴ I. Moore, *International Arbitrations Digest* 287, 329, 374 (1898); II 1317; IV 3734, 4313, V 4633.

⁵ Ralston, *Supplement to 1926 Revised Edition of the Law and Procedure of International Tribunals*, § 241 (a) (1930).

⁶ Administrative Decision No. III, December 11, 1923.

property taken or destroyed by Germany or her agents during the period of neutrality" and "during the period of belligerency";

2. The measure of compensation will include interest "In all claims for losses wherever occurring sustained at any time during the war period based on personal injuries or on death, and in all claims arising during the period of belligerency" based upon "any kind of maltreatment of prisoners of war," or "acts of cruelty, violence, or maltreatment" of civilians including imprisonment, forced labor, the imposition of fines, etc.; as well as claims for personal injuries resulting from military operations.

The Hague Permanent Court of Arbitration, in considering the same subject, made the following statement:⁷

The tribunal is of the opinion that all interest-damages are always reparation, compensation for culpability. . . . Legal interest allowed a creditor for a sum of money from the date of the demand in due form is the legal compensation for the delinquency of a tardy debtor exactly as interest-damages or interest allowed in case of an act of violence, of a quasi-act of violence or the non-fulfillment of an obligation are compensable for the injury suffered by the creditor. . . . Identical in their origin—culpability—they are the same in their consequences—reparation in money. . . .

Another authority has stated that "The question of the allowance of interest has in fact arisen before almost every international tribunal, and usually, and except where the claim was for a tort purely, its allowance has been considered rightful, differences more frequently arising as to the time of its commencement or termination and the rate at which it shall be allowed."⁸

Thus, interest has usually been granted in the following types of claims:⁹

1. for the breach of a contract;
 2. "for the illegal seizure and detention of property";
- and
3. for forced loans.

On the other hand, the Mexican-American Mixed Claims Commission recognized the general rule that interest shall not be allowed when a lump sum for damages was granted.¹⁰ Nor did the Mixed Claims Commission, United States and Germany, award "damages in the nature of interest where the loss is neither liquidated nor the amount thereof capable of being ascertained by computation merely."¹¹ In other instances, interest has

⁷ Ralston, *The Law and Procedure of International Tribunals* § 211 (rev. ed. 1926).

⁸ *Id.* at § 212.

⁹ III Whiteman, *Damages in International Law* 1913 (1937).

¹⁰ *Opinions of Commissioners (Venable v. Mexico)* 348 (1927).

¹¹ Ralston, *op. cit. supra*, note 5.

been denied where its allowance would be inequitable, such as claims wherein the amount of loss is indefinite or not well proved.¹² Additionally, where the government concerned had little, if any, responsibility for the acts giving rise to the claim, no interest was awarded.¹³

Similar principles have been applied in the determination of claims against the United States under domestic law. Thus, it has been held that when the Government of the United States goes into the business of insurance and provides that in case of disagreement it may be sued, "it must be assumed to have accepted the ordinary incidents of suits in such business," including the payment of interest.¹⁴ It has also been held that interest is a proper part of "just compensation" in eminent-domain proceedings.¹⁵ Where the government acts as a contractor,¹⁶ it has been held liable for interest, as well as in suits to recover excess duties illegally exacted,¹⁷ despite the absence of a statute to that effect.

The fact that the Congress considered the question of interest as applicable to at least some of the claims under Sections 303, 304, and 305 of the Act is evidenced by the provisions of Section 310(a) (5) which reads as follows:

After payment has been made in full of the principal amounts of all awards from any one fund, pro rata payments from the remainder of such fund then available for distribution on account of *accrued interest on such awards as bear interest*. (Emphasis supplied)

It has been suggested, however, that the foregoing section pertains to "moratory interest" running from the date of the award to the date of payment as distinguished from "compensatory interest" running from the date of the loss to the date of the award. Such an interpretation would in effect charge the Government of the United States with the duty of accomplishing the prompt payment of awards in full in order to avoid the accumulation of interest. Inasmuch as the statute provides for payment in certain installments thereby necessitating delays in every case, it hardly warrants mention that such could not have been the intention of the Congress in enacting Title III of the Act. The only conclusion consistent with the evident intention of the Congress in this respect is that the Commission has been given the discretion to determine, "in accordance with applicable substantive law, including international law," which claims, if any, shall bear interest as well as the period during which and the rates at which such interest shall be computed. It is equally clear that the term, "on such

¹² III Whiteman, *op. cit. supra*, note 9, at 1990.

¹³ II Moore, *op. cit. supra*, note 4, at 1445.

¹⁴ *Standard Oil Co. of N. J. v. U.S.*, 267 U.S. 76 (1925).

¹⁵ *U.S. v. Rogers*, 255 U.S. 103 (1921).

¹⁶ *National Home For Disabled Volunteer Soldiers v. Parrish*, 229 U.S. 494 (1912).

¹⁷ *Redfield v. Bartels*, 139 U.S. 694 (1891).

awards as bear interest," necessarily implies that the Congress did not intend that interest be summarily granted on all claims.

In this connection, it should be noted that certain claims based upon judgments under Section 305(a) (1) of the Act will undoubtedly include interest as parts of the judgments. To hold that this is the interest referred to in Section 310(a) (5) of the Act would be straining the meaning of the language employed by the Congress, and render superfluous the provisions of Section 305(b) of the Act which are as follows:

Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

In order to give vitality and effect to the foregoing language of the Act, it must be concluded that the entire amount of the judgment including interest, if any, represents "the principal amount of each award" under Section 310 of the Act. By the same token, any claim based upon a contract or other instrument, which by its terms bears interest, should likewise be construed as including the amount of interest so provided in determining "the principal amount" of such award.

The further suggestion that interest be awarded irrespective of the fact that the fund concerned may be depleted before the principal amounts are fully paid, will be dealt with below.

In order to resolve the question of which claims should include interest over and above the principal amounts of awards, it is necessary to examine the nature of the claims recognized under Sections 303, 304 and 305 of the Act. These sections provide for the payment of three general categories of claims as follows:

- (1) nationalization and expropriation claims;
- (2) breach of contract and debt claims; and
- (3) war damage claims.

Ample authority exists to sustain the conclusion that claims under categories (1) and (2) above should be deemed to bear interest, and particularly where the losses result from culpability. The rule under which interest is allowed in cases of a similar nature pervades domestic law whether or not the government is a party. Thus, the law allows interest where a contract is breached,¹⁸ for the use of forbearance of money, or as damages for its detention,¹⁹ or for the violation of some duty,²⁰ or for the loss of the use of property.²¹

¹⁸ *Loudon v. Taxing Dist. of Shelby County*, 104 U.S. 771 (1882).

¹⁹ *Marion v. City of Detroit*, 284 Mich. 476, 280 N.W. 26, 29 (1938).

²⁰ *U.S. v. Bethlehem Steel Corp.*, 23 F. Supp. 676 (E.D. Pa. 1938), *aff'd*; 113 F. 2d 301 (3d Cir. 1940), *aff'd*; 315 U.S. 289 (1942).

²¹ *Resolute Ins. Co. v. Percy Jones, Inc.* 198 F. 2d 309 (10th Cir. 1952).

The practice of awarding interest in nationalization and expropriation claims was adopted by the International Claims Commission as a precedent based upon the premise that the claimants were entitled to reparation "for the loss of each claimant's use of the property from the time of taking. . . ." ²²

However, claims for war damage appear to rest on other principles. As a general rule, "Injuries sustained by private property as a direct result of belligerent acts—battle, siege, bombardment—or incidental thereto are not the subject of indemnification." ²³ This former rule has been changed in modern times to one of indemnity by international commissions, ²⁴ principally because the acts giving rise to the damage were in violation of the laws of war. Nevertheless, compensation is not allowed for war damage in the absence of a provision in the treaty of peace to this effect, ²⁵ or special legislation in the nature of the War Claims Act of 1948, as amended. ²⁶ It appears, however, that claims will be recognized under the Act irrespective of whether the losses resulted from the action of the Allied Nations or the countries against which the claims are filed. As stated by the committee which reported on H. R. 6382, the bill finally enacted as Public Law 285, "War damage claims include claims for the physical loss or destruction of identifiable property resulting from war operations in the particular country against which the claim is filed." ²⁷

It is clear that interest is generally awarded where culpability is shown to exist—wrongful possession, breach of contract and payment withheld. While it may be contended that even where the losses resulted from the action of the Allied Nations, assuming it were possible to establish this or the contrary as a fact, it may be attributed to the country concerned. Such losses are, nevertheless, to be distinguished from others more direct in point of intention.

In this connection, it is noted that a distinction is made in the several articles of the treaties of peace with Hungary, Bulgaria, and Rumania, respecting compensation for damages and losses suffered by United States nationals. These articles, all identical, do not provide for application to the government involved where the claim arises out of war damage, as they do in cases based upon seizure or sequestration of property. ²⁸ Insofar as war damage claims are concerned, the articles simply provide

²² *Claim of Joseph Sencer*, Docket No. Y 1736, Dec. No. 663.

²³ Borchard, *The Diplomatic Protection of Citizens Abroad* § 106 (1928), citing Vattel, Moore, Oppenheim, and various decisions by international commissions.

²⁴ *Id.* at § 99.

²⁵ *Id.* at § 3193. H. Oppenheim, *International Law* § 74 (7th ed. 1965).

²⁶ 62 Stat. 246 (1948), 49 U.S.C. App. § 2601-2616 (1964). The Commission did not allow interest on claims under that Act since compensation was deemed gratuitous.

²⁷ S. Rep. No. 1059, 84th Cong., 1st Sess. 3 (1955).

²⁸ Treaty of Peace with Bulgaria, Sept. 18, 1947, art. XXIII, para. 2 and 4, T.I.A.S. No. 1650; Treaty of Peace with Hungary, Sept. 15, 1947, art. XXVI, para. 2 and 4, T.I.A.S. No. 1651; Treaty of Peace with Rumania, Sept. 15, 1947, art. XXIV, para. 2 and 4, T.I.A.S. No. 1649.

that the particular country shall compensate to the extent of two-thirds of the loss. It is presumed that these countries were thereby required to provide some machinery to accommodate such claims. To be sure, a failure to honor a valid claim under these treaty provisions may be a sound basis for allowing interest on the theory that payment was wrongfully withheld. However, before such a finding could be made, it would first be necessary to trace the action taken by the claimant, the State Department and the particular country, with respect to each war damage claim. The Chairman of the Commission has estimated that the following number of war damage claims would be filed under the Act: ²⁹

| | |
|-----------------------------------|--------|
| (a) Claims against Hungary ----- | 2,268 |
| (b) Claims against Rumania ----- | 840 |
| (c) Claims against Bulgaria ----- | 268 |
| (d) Claims against Italy ----- | *1,500 |

Such an investigation under these circumstances would create an almost impossible administrative burden. Moreover, it appears from present estimates that the amount of loss in war damage claims will generally be indefinite, may present difficulties in proof, and may be considered as unliquidated claims for lump sums which would not, under international law, warrant an award of interest.

In view of the foregoing, it is recommended that interest be allowed on claims based upon nationalization, seizure, breach of contract and debt claims, and that no interest be granted in pure war damage claims.

Whether or not claims for personal torts will be recognized as valid under the Act has not as yet been determined. For the purposes of this discussion, it will be presumed that certain tort claims will be acceptable under Sections 304 and 305 of the Act.

Pure tort claims, being neither liquidated nor capable of being ascertained by computation merely, usually result in a lump-sum payment in which interest, as an element of damages, is not considered applicable.³⁰ It is, therefore, recommended that no interest be allowed in any personal tort claims determined to be valid under the Act.

The next question which presents itself relates to the periods of time during which interest shall be deemed to have accumulated for purposes of awards.

Under international law, claims arising out of breach of contract have generally been found to warrant the payment of interest from the date of the breach.³¹ The same principles have been applied to claims based upon the taking or seizure of property.³²

With respect to the date when interest shall cease to

²⁹ Hearings on H.R. 6382 Before the Senate Committee on Foreign Relations, 84th Cong., 1st Sess. 16-17 (1955).

*Which may include a substantial number of war damage claims.

³⁰ Ralston, *op. cit. supra* note 7, at § 212.

³¹ III Whiteman, *op. cit. supra* note 9, at 1928.

³² *Id.* at 1932.

run, "It is well settled that where a disputed fund is deposited in court, interest is not recoverable thereon during the time it remains so deposited."³³ For the purpose of determining claims under the Act, the assignment of funds pursuant to the Litvinov Assignment and the Memorandum of Understanding may be deemed to be in the nature of tenders into court thereby preventing the further running of interest. This was the position taken in connection with the *Claim of Joseph Senser*,³⁴ in which interest was awarded "from the time of taking to the date of payment by the Government of Yugoslavia of the lump sum of \$17,000,000."

It is noted that no such assignments were made by the Governments of Bulgaria, Hungary, and Rumania. However, pursuant to the provisions of Title II of the Act, certain blocked property of these countries was authorized to be vested in the Government of the United States. Undoubtedly, some time will elapse before the property is actually vested and liquidated. Under the circumstances, it would not be good administrative practice to wait until those events occur in order to accurately compute the amount of interest on any claim under Section 303 of the Act. The authority to vest the property may be deemed to be equivalent to an assignment of a lump sum of money. Accordingly, it is recommended that interest on such claims cease to run as of August 9, 1955, the effective date of Title III of the Act.

Certain practical considerations suggest themselves in relation to the subject of interest. Should the Commission allow interest when clearly there will be insufficient funds to pay the principal in full? Does the Commission have authority to issue an award of interest under such circumstances?

It is noted that under Section 305(a)(1) of the Act, awards may not exceed the proceeds of the property against which the "in rem" proceedings were had. This provision merely expresses the law which governs such secured creditors. However, it also serves to illustrate how impractical it would be to issue an award in excess of available funds when the chance of ever obtaining satisfaction with respect to the excess amount is so remote that it may be considered impossible for all intents and purposes. It appears that the Congress was aware of these circumstances during the course of the proceedings leading to the enactment of Title III of the Act. As stated by the Committee which recommended the enactment of the bill, "The purpose of the present bill is to establish a claims program for the benefit of American nationals whereby they may obtain at least partial compensation. . . . Because there is at present no other way for American owners to obtain recompense for their

³³ *Fox v. Lofland*, 98 F. 2d 589 (3d Cir. 1938); cert. denied, 305 U.S. 658 (1939).

³⁴ *Op. cit. supra* note 22.

losses except against the assets made available in this bill. . . .”³⁵

Nevertheless, it has been suggested that interest be included as part of those awards which bear interest inasmuch as this will be of assistance in any future negotiations with the countries concerned pursuant to the provisions of Section 313 of the Act. In this respect, the issuance of such awards may be of questionable value inasmuch as the decisions of the Commission may not be considered binding in such negotiations, which will necessarily be in the nature of de novo proceedings.

Accordingly, it is suggested that: (1) interest be awarded on such claims as bear interest by the express or implied terms of the transactions giving rise to the claims; and (2) interest be awarded on other claims, which under substantive law warrant interest as indicated hereinabove.

The rate of interest usually varies from 3 to 6 per centum.³⁶ Where the initial transaction giving rise to the claim prescribes a fixed rate of interest, this rate should apply until maturity. In order to be uniform, interest should be allowed at a fixed rate in all other cases. Inasmuch as 6 per centum was allowed by the International Claims Commission and is usually considered the legal rate of interest, it is suggested that this rate apply.

In its Panel Opinion No. 5, the Commission accepted the recommendations in principle and concluded that under Section 303 of Public Law 285, 84th Congress, interest should be computed at the rate of 6% per annum on the awards, except with respect to war damage awards made under Section 303(1) which were limited by the statute to two-thirds of the loss or damage actually sustained, the interest to be computed for the period commencing on the date of the loss and terminating on August 9, 1955, the date when the authority to vest the assets of Bulgaria, Hungary and Rumania was granted.

Accordingly, in the instant claim, no interest was allowed, since this claim was based in its entirety on war damage. In claims where awards were granted for loss resulting from nationalization or other taking of property or from failure of the Governments of Bulgaria, Hungary or Rumania to meet United States dollar obligations, 6% interest on the award was allowed. (*Claim of Andrew de Balogh*, Claim No. HUNG-20573, Dec. No. HUNG-1993, 10 FCSC Semiann. Rep. 66 (Jan.-June 1959); *Claim of Anthony Geraci, Jr.*, Claim No. BUL-1040, Dec. No. BUL-2, 10 FCSC Semiann. Rep. 14 (Jan.-June 1959).)

In claims under Title III of the 1949 Act based upon dollar bonds of the Governments of Bulgaria, Hungary and Rumania, including loss due to nonpayment of interest on coupons maturing on various dates, the Commission's awards included interest at the rate of 6% per annum from the respective due dates of the obligations to August 9, 1955, as in *Claim of Arthur Zentler*, appearing at page 246.

³⁵ S. Rep. No. 1050, *supra* note 27, at 1-3.

³⁶ III Whiteman, *op. cit. supra* note 9, at 1913.

SAMUEL WEISS

Against the Government of Hungary

Claim against Hungary denied under Section 303(1) of the 1949 Act because the properties involved were not located in Hungary as it existed on September 15, 1947, and denied under Section 303(2) because not located in Hungary at the time of loss. Pursuant to Article 26 of treaty of peace with Hungary, referred to in Section 303(1), Hungary was responsible for war losses in Hungary as it existed on September 15, 1947, as well as for losses in Northern Transylvania, a part of Rumania.

FINAL DECISION

This is a claim against the Government of Hungary under Section 303 of the International Claims Settlement Act of 1949, as amended, for an alleged taking of movable property by Hungarian troops in Slovenske Nove Mesto, Czechoslovakia.

In the Proposed Decision issued on January 16, 1957, the claim was held to be not compensable under Section 303(1) or Section 303(2) of the Act because the property on which it is based was not located in Hungary as it existed on September 15, 1947, or in Northern Transylvania.

Section 303(1) of the Act authorizes the Commission to receive and determine claims against the Government of Hungary for failure to restore or pay compensation for property of nationals of the United States as required by articles 26 and 27 of the treaty of peace with Hungary. Article 26 of the treaty provides that Hungary shall restore all legal rights and interests in Hungary of the United Nations and their nationals as they existed on September 1, 1939, and that it shall return all property of the United Nations and their nationals in Hungary as it existed on September 15, 1947 (the effective date of the treaty of peace), and that Hungary shall pay certain compensation to those United Nations nationals whose properties in Hungary or Northern Transylvania suffered war damage or those whose properties in Hungary can not be returned.

Article 27 of the treaty provides relief with respect to property in Hungary for persons, organizations, or communities which suffered loss by reason of racial origin, religion, or other Fascist measures of persecution.

The Commission affirms its holding that it is a requirement for an award under Section 303(1) of the Act in a claim against Hungary that the alleged loss have occurred within the boundaries of Hungary as they existed on September 15, 1947, or in Northern

Transylvania. By virtue of article 1 of the treaty, the frontier between Hungary and Czechoslovakia as of September 15, 1947, is that which existed on January 1, 1938, with minor changes of no significance herein. Finding Slovenske Nove Mesto to have been in Czechoslovakia, rather than in Hungary or Northern Transylvania, on September 15, 1947, the Commission holds this claim not compensable under Section 303(1) of the Act.

Section 303(2) of the Act authorizes, *inter alia*, the receipt and determination of claims against the Government of Hungary for its failure to "pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title [August 9, 1955], of property of nationals of the United States in . . . Hungary. . . ." Here also, a claim is compensable only if based upon a loss of property *in Hungary*. However, in the absence of any words to the contrary, such as the reference to the treaty of peace in Section 303(1), it must be held that it is the clear intention of the Congress that the loss have occurred in Hungary as it existed at the time of loss in order for a claim to fall within the purview of Section 303(2).

The claimant has objected to the Proposed Decision, alleging that at the time of loss (October 1938), Slovenske Nove Mesto was a part of Hungary, having become such through annexation. We must consider, therefore, whether, in the light of this allegation, the claim may be found compensable under Section 303(2). The Commission finds, upon investigation, that Slovenske Nove Mesto was not a part of Hungary in October 1938, and accordingly finds that this claim is not compensable.

The dismemberment of Czechoslovakian territory began with the Munich Agreement of September 29, 1938, under which the Sudetenland was incorporated into Germany. Czechoslovakia remained a federative state composed of three autonomous divisions: Bohemia and Moravia, Slovakia, and Subcarpathia. Slovakia included an area known as the Highland Territories which, with Subcarpathia, had been lost by Hungary to Czechoslovakia under the Trianon Treaty of 1921. Slovenske Nove Mesto was within the Highland Territories, to which Hungary renewed its claims during the Munich crisis. Germany and Italy, having assumed factual control of Central Europe by the time of the Munich Agreement, determined to arbitrate Hungarian claims against Czechoslovakia. As a result, the so-called Vienna Award was issued on November 2, 1938, by the German and Italian Foreign Ministers, allotting a number of Czechoslovakian districts to Hungary, including the Highland Territories and Slovenske Nove Mesto. The Hungarian Government formally accepted the award and incorporated the Highland Territories by

"Law XXXIV of 1938 concerning the Reincorporation into the Country of the Highland Territories Returned to the Hungarian Holy Crown, November 12, 1938." Some readjustment of boundaries was made as of March 13, 1939 in what purported to be a final agreement in execution of the Vienna arbitration (Order No. 102,473, 1939 B.M. of the Hungarian Royal Ministry of the Interior). Thereafter, Slovenske Nove Mesto remained, at least *de facto*, a part of Hungary until the 1945 armistice. By article 1, paragraph 4(a), of the treaty of peace with Hungary, the decisions of the Vienna Award of November 2, 1938, were declared null and void.

Entirely apart from the question of the validity of the Vienna Award and the extent to which the Commission is bound to give it effect, it will be seen that Slovenske Nove Mesto was a part of Czechoslovakia at the time of claimant's alleged loss, which antedated both the issuance of the Award, and its acceptance and the official "reincorporation" of the territory. As early as October 10, 1938, it was reported that the Czechoslovakian Government was willing to make certain relatively small concessions to Hungary, including the return of Slovenske Nove Mesto; and it appears that Hungarian troops crossed the border and occupied Slovenske Nove Mesto on October 11, 1938. It is well settled in international law, however, that sovereignty is not acquired by mere occupation of the territory of another nation by armed force; and there is no evidence to indicate that the Hungarian action was other than premature, in anticipation of later acquisition of sovereignty at the conclusion of then pending negotiations. The Commission does not hold that depredations committed in the interim by Hungarian troops on Czechoslovakian soil do not give rise to claims in international law against the Government of Hungary. The Commission does hold, however, that they do not give rise to compensable claims against Hungary under Section 303(2) of the International Claims Settlement Act, in view of the requirement that the loss have occurred within the borders of Hungary as they existed at the time of loss.

Accordingly, the Proposed Decision herein is affirmed, and the claim is denied.

Dated at Washington, D.C.
September 4, 1957.

Claims for war damage in Bulgaria, Hungary, and Rumania.—
The legal basis for the payment of claims based upon war losses is either a treaty under the terms of which a defeated

power is required to discharge claims for war losses, or domestic legislation which each country is free to develop and implement as it finds convenient. With respect to Bulgaria, Hungary, and Rumania, the peace treaties signed at Paris, France, on February 10, 1947 by the Allied Powers and these three countries, and effective on September 15, 1947, provided that the latter should restore property to United Nations nationals or pay compensation or indemnity in domestic currency to the extent of two-thirds of the sum necessary to purchase similar property or to make good the loss suffered. (Treaty of Peace with Bulgaria, Sept. 15, 1947, Art. 23, T.I.A.S. No. 1650, 61 Stat. 1915; Treaty of Peace with Hungary, Sept. 15, 1947, Art. 26 and 27, T.I.A.S. No. 1651, 61 Stat. 2065; Treaty of Peace with Rumania, Sept. 15, 1947, Art. 24 and 25, T.I.A.S. No. 1649, 61 Stat. 1757.) However, as a rule, no payment for war damage under the peace treaties was made by any of the three countries.

In view of the continued delinquency of these three governments, the 1949 Act was amended to include Title III, which in Section 303(1) authorized the Commission to determine claims of United States nationals arising out of the failure of the three governments to restore or pay compensation as required by the provisions of the peace treaties.

Boundaries.—Certain problems arose in view of the fact that since 1938 many territorial changes had been effected in Bulgaria, Hungary, and Rumania and their boundaries were different at various times.

Bulgaria obtained the area of Southern Dobruja from Rumania under the Treaty of Craiova as of August 31, 1940; joined the Axis Powers by signing the Tripartite Pact in Vienna on March 1, 1941; and in April 1941, in the wake of the German defeat of Yugoslav and Greek armies, occupied the portion of Yugoslavia known as Serbian Macedonia and the portions of Greece known as Eastern Macedonia and Western Thrace. Serbian and Eastern Macedonia and Western Thrace were lost to Bulgaria under Article 1 of the treaty of peace which provided that the frontiers of Bulgaria should be those which existed on January 1, 1941. Southern Dobruja remained a part of Bulgaria.

Hungary occupied a portion of Slovakia on November 3, 1938, Carpathian Ruthenia or Subcarpathia on March 15, 1939, and Northern Transylvania on August 30, 1940. Under Article 1 of the treaty of peace, Hungary's frontiers were established as they had been on January 1, 1938, with a minor adjustment as to the frontier between Hungary and Czechoslovakia. As a result, Hungary withdrew from the territories which it had occupied and, in addition, ceded to Czechoslovakia the villages of Horvathjalfalu, Oroszvar, and Dunacsun.

Rumania lost the territories known as Northern Bukovina and Bessarabia when they were occupied by the U.S.S.R. on June 27, 1940 and new boundaries were established by a Soviet-Rumanian Agreement of June 28, 1940. As noted above, Northern Transylvania was occupied by Hungary on August 30, 1940, and Southern Dobruja was ceded to Bulgaria on August 31, 1940. When the German armies drove back the Russian forces, Rumania reoccu-

pied Northern Bukovina and Bessarabia from mid-July 1941 until the spring of 1944, but these territories were lost to the U.S.S.R. under Article 1 of the treaty of peace which fixed Rumania's frontiers as they existed on January 1, 1941, except for the Rumania-Hungary frontier which was restored as it had been on January 1, 1938. This brought Northern Transylvania back into Rumania, but left Southern Dobruja in Bulgaria.

The question arose whether claims for the loss of property which occurred within the wartime boundaries are compensable as losses attributable to the country which exercised actual authority over the property at the time of loss, or whether claims against a country are confined to property located within the boundaries of that country as established by the peace treaties of September 15, 1947.

Article 23 of the treaty of peace with Bulgaria required Bulgaria to return all property "in Bulgaria of the United Nations and their nationals as it now exists." Articles 26 and 24 of the treaties of peace with Hungary and Rumania, respectively, similarly required the return of property "in Hungary" and "in Rumania," "as it now exists." An exception was made as to Northern Transylvania in the Hungarian and Rumanian treaties, in that the provisions requiring payment of compensation for lost or damaged property would apply to Hungary, rather than Rumania, if the action giving rise to a claim concerning property in Northern Transylvania took place when that territory was subject to Hungarian rather than Rumanian authority. (Extracts from the treaties with Bulgaria, Hungary, and Rumania appear on pages 740, 743, and 746, respectively.)

Accordingly, the Commission confined claims against a country under Section 303(1) of the Act to property which had been located within the boundaries of that country as established by the peace treaties, with the noted exception in the case of Northern Transylvania. Thus, the *Weiss* claim, based upon a loss of property in Slovenske Nove Mesto, Czechoslovakia, was denied as a claim under Section 303(1) of the Act even though that community was under Hungarian occupation at the time of loss. It was not within the boundaries of Hungary as established by the treaty of peace. The claim likewise was found to be not compensable under Section 303(2) of the Act, covering the nationalization or other taking of property "in Bulgaria, Hungary, and Rumania." In this respect the Commission noted that under international law, sovereignty is not acquired by mere occupation of the territory of another nation by armed force. The Commission stated specifically that it was not holding that depredations committed by Hungarian troops in Czechoslovakia do not give rise to claims against Hungary in international law, but did hold that they do not give rise to valid claims against Hungary under Section 303(2) of the Act in view of the requirement that the loss have occurred within the borders of Hungary as they existed at the time of loss.

In a similar situation, the Commission denied a claim against Hungary based upon a loss of property in Berehovo, once a part of Czechoslovakia, but occupied by Hungary at the time of loss, and under the jurisdiction of the U.S.S.R. as of September 15,

1947, under the treaty of peace. It was contended that the area was a part of Hungary at the time of loss. The Commission, however, held that "It is well established that acquisition of territory by subjugation requires a formal annexation following a *firmly established* conquest, and that a conquest does not become firmly established so long as the armed conflict continues. (I Oppenheim, International Law, Sections 169, 210, 236, 237, 239.) In this instance, the armed conflict continued until the conquest was nullified under the terms of the armistice. The Commission concluded, therefore, that Berehovo, which was Beregszasz, Czechoslovakia, at the inception of World War II, may not be considered to be in Hungary within the contemplation of the treaty of peace with Hungary or Section 303(1) of the Act." (*Claim of Arline Ray*, Claim No. HUNG-20894, Dec. No. HUNG-688, 10 FCSC Semiann. Rep. 43 (Jan.-June 1959).) In the same manner, a claim filed against Bulgaria, for loss of property in Greece at a time when it was occupied by Bulgaria, was denied. (*Claim of George Theohari*, Claim No. BUL-1086, Dec. No. BUL-26.)

In a claim against Hungary under Section 303(1) of the Act, involving the special situation in Northern Transylvania, the Commission granted an award for two-thirds of the value of two houses in Oradea Mare which had been destroyed during the war. Although Oradea Mare is in Northern Transylvania and a part of Rumania, it was subject to Hungarian authority at the time of loss. In these circumstances, because of the specific provisions of the treaties of peace, the claim was properly one against the Government of Hungary. (*Claim of Veronika Spisak*, Claim No. HUNG-22374, Dec. No. HUNG-1328, 10 FCSC Semiann. Rep. 57 (Jan.-June 1959).)

A claim based upon an alleged loss of property in Dobruja as a consequence of the cession of that area by Rumania to Bulgaria in 1940, was denied for failure to establish any acts or failures to act on the part of Bulgaria, for which it was responsible under the Act. The cession itself was found to be a proper exercise of sovereignty, not giving rise to a compensable claim against Rumania or Bulgaria. (*Claim of Leon Bileca*, Claim No. BUL-1360, Dec. No. BUL-264, 10 FCSC Semiann. Rep. 22 (Jan.-June 1959).)

Voluntary aid to the enemy.—In a very few claims the Commission was constrained to apply Section 312 of Title III of the Act which provided as follows:

No award shall be made under this title to or for the benefit of any person who voluntarily, knowingly, and without duress gave aid to . . . or in any manner served any government hostile to the United States during World War II. . . .

In one such claim, when it was evident that a claimant had invested substantial amounts of funds for the purchase of heavy machinery and equipment which was then employed in construction projects aiding and serving the Government of Hungary while that government was at war with the United States, the claim was denied. (*Claim of Esther De Buzna*, Claim No. HUNG-20650, Dec. No. HUNG-2032.)

Against the Government of Rumania

Taking of personal property from members of the Armed Forces of the United States upon capture in Bulgaria, Hungary, or Rumania during World War II gave rise to claims under Section 303(1), Title III of the 1949 Act, although provision may have been made for such claims under another statute.

PROPOSED DECISION

This is a claim against the Government of Rumania under the provisions of Section 303 of the International Claims Settlement Act of 1949, as amended, for the loss of certain personal property valued at five hundred twenty-five dollars (\$525.00), allegedly taken from the person of the claimant, then a member of the Armed Forces of the United States, following a parachute landing in Rumanian territory and capture by Rumanian authorities during World War II.

Section 303 of the Act, in the pertinent part, authorizes the Commission to receive and determine in accordance with applicable substantive law, including international law, claims of nationals of the United States against the Government of Rumania arising out of the failure to—

- (1) to restore or pay compensation for property of nationals of the United States as required by articles 24 and 25 of the treaty of peace with Rumania;
- (2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to August 9, 1955, of property of nationals of the United States in Rumania.

The claim here under consideration appears to be one substantially cognizable under the language of the Military Personnel Claims Act of 1915.¹ This Act authorized the payment of claims of civilian employees and military personnel of the Armed Forces of the United States "for damage to or loss, destruction, capture, or abandonment of personal property incident to their service." The history of this Act was carefully traced and its purpose was aptly stated by a court in one of the leading cases on the subject.² In its decision, the court stated, in part, as follows:

The Act was the culmination of years of effort to secure for military personnel a comprehensive system of compensation for loss of personal property in the service.
* * * It was manifestly the intent of the Congress that

¹ 39 Stat. 215; 31 U.S.C. 471 c.

² *Fidelity-Pharmaceutical Co. v. U.S.*, 111 F. Supp. 899 (1953).

the Military Personnel Claims Act should remain as the single comprehensive remedy for property losses of military personnel incident to their service.

The Court cited the applicable Air Force Regulations promulgated under the Act (AFR-112-7, 15 Federal Register 1511, § 836.92(b), 32 C.F.R. (1951 Revised Edition) § 836.92(b)), and quoted, as one example of claims payable thereunder, the following regulation:

(4) *Enemy action or public service.* Where property is damaged, lost, destroyed, captured, or abandoned as a result of enemy action or threat thereof, combat or activities incident thereto, belligerent activities or *unjust confiscation by a foreign power or its nationals*, civil disturbances, public disasters, or the saving of Government property or human life. (Emphasis supplied.)

In cases in which the question has arisen, the remedy has been held to be exclusive,³ regardless of whether the property in question belonged to a serviceman or to another.⁴ Nothing appears either in the language or the history of Public Law 285 which would support a finding that in the enactment of this measure the Congress intended to provide a measure of compensation for claims for which no provision had previously been made. Thus, in the report⁵ of the Senate Committee which recommended enactment of H. R. 6382, the bill which became Public Law 285, there appears the following statement:

The purpose of the present bill is to establish a claims program for the benefit of American nationals whereby they may obtain at least partial compensation for (1) war damage, nationalization, and pre-war government debt (bond) claims, against the Governments of Bulgaria, Hungary, and Rumania.

The Committee pointed out that these countries had failed to honor their obligations under the respective treaties of peace to compensate for war damage inflicted on American-owned property, and had failed to provide compensation "for property which was nationalized or otherwise taken subsequent to the date of the treaties."⁶

The Commission is of the opinion that losses sustained by military personnel of the United States incident to their service are not compensable under Public Law 285, 84th Congress.

For the foregoing reasons, this claim should be and hereby is

³ *Preferred Ins. Co. v. U.S.*, 222 F. 2d 942 (1955); cert. denied, 350 U.S. 837 (1955); rehearing denied, 351 U.S. 990 (1956).

⁴ *Wallis v. U.S.*, 126 F. Supp. 673 (1954).

⁵ S. Rep. No. 1050, 84th Cong., 1st Sess. 1 (1955).

⁶ *Id.* at 2.

denied. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D.C.
March 3, 1958.

Dissenting Opinion:

I cannot find myself in agreement with the proposed decision on this claim. I find no language in the International Claims Settlement Act of 1949, as amended, (Public Law 285, 84th Congress) nor in the intent of Congress as revealed by the history of the legislation, which would preclude a claimant, otherwise eligible, from receiving an award under this act, solely by reason of the fact that he may have been entitled to some compensation for his loss if he had filed a claim under the Military Personnel Claims Act of 1945.

It is my opinion that the cases cited are not directly in point. The courts in such cases decided that under the Military Personnel Act of 1945, the United States was liable for certain losses, sustained by the members of the military forces and civilian employees of the military and that such remedy was exclusive where the property loss bore some *substantial relation* to the claimants' military service. Quoting from Section (a) of the Act, "such property must be reasonable, useful, necessary or proper under the attending circumstances."

The instant claim is distinguishable in two respects. Firstly, it is not a claim against the United States, but a claim against the government of Rumania. And, secondly, it cannot be said on the basis of the record before the Commission, that the property on which the claim is based was *militarily reasonable, useful, necessary or proper* under the attending circumstances, all of which must be established as prerequisites for eligibility for compensation under the Military Personnel Act of 1945 (*supra*).

Dated at Washington, D.C.
March 3, 1958.

FINAL DECISION

This is a claim against the Government of Rumania under Section 303(1) of the International Claims Settlement Act of 1949, as amended, for \$525.00 by JAMES ALLEN BRITAIN, a national of the United States since his birth in the United States on March 23, 1923, for loss of property in Rumania during World War II.

In a decision issued on March 3, 1958, the denial of the claim was proposed. After consideration of objections filed and argu-

ments presented at a hearing held on July 2, 1958, the Commission now finds that the claimant was the owner of certain personal property which was lost in Rumania as a result of World War II, and that such loss falls within the scope of Section 303(1) of the Act. The Commission further finds that the loss or damage actually sustained amounted to Five Hundred Twenty-Five Dollars (\$525.00) and concludes that claimant is entitled to an award under Section 303(1) of the Act for two-thirds of that amount, since under this Section awards are limited to two-thirds of the loss or damage actually sustained.

AWARD

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, an award is hereby made to JAMES ALLEN BRITTAIN in the amount of Three Hundred Fifty Dollars (\$350.00).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on his behalf, of any rights against the Government of Rumania for the unpaid balance of the claim, if any.

It is ORDERED that the award granted herein be certified to the Secretary of the Treasury.

Dated at Washington, D.C.

July 30, 1958.

Confiscation by military authorities.—In a few claims the question arose whether property of American nationals confiscated during the war by military authorities of Bulgaria, Hungary, and Rumania fell within the provisions of Section 303(1) of the Act. The question was answered in the affirmative. Thus, a claim for the loss of an automobile confiscated during the war by Rumanian military forces was deemed as having been a war damage loss, compensable under Section 303(1) to the extent of two-thirds of the loss. (*Claim of Harry Juster*, Claim No. RUM-30017, Dec. No. RUM-278, 10 FCSC Semiann. Rep. 107 (Jan.-June 1959).)

Failure to restore property seized during World War II by civilian authorities.—Articles 23, 24 and 26 of the treaties of peace with Bulgaria, Hungary and Rumania, respectively, provided for the restoration to its owners of property seized during the war or for the payment of compensation, if the property could not be returned. In a claim where assets of an American company were sequestered and taken under the control of the Government of Rumania in 1944, and where the assets were neither

returned nor the loss compensated, the Commission held in the Proposed Decision that such loss is compensable under Section 303(1) as a war loss and the award was limited to two-thirds of the loss. The Commission also held that the statute provided compensation for losses or damage *actually* sustained, and not for the loss of anticipated profits or intangible property. (*Claim of United Shoe Machinery Corporation*, Claim No. RUM-30269, Dec. No. RUM-816, 10 FCSC Semiann. Rep. 131 (Jan.-June 1959).)

In another claim, the Commission was confronted with the fact that during World War II the Government of Bulgaria collected from a claimant discriminatory anti-Jewish taxes and rentals from his property. No restoration was made to the claimant by that Government. The Commission held that this damage was compensable under Section 303(1) of the Act and limited the award to two-thirds of the loss actually sustained. (*Claim of Isaac Arditti*, Claim No. BUL-1294, Dec. No. BUL-326, 10 FCSC Semiann. Rep. 25 (Jan.-June 1959).)

Loss of property by military personnel.—A controversial question was under consideration by the Commission with respect to losses of personal property sustained by United States military personnel who had been prisoners of war in Bulgaria, Hungary or Rumania. In 1945 a statute was enacted (Military Personnel Claims Act of 1945, 59 Stat. 225, 31 U.S.C. 222c) which authorized the payment of claims of civilian employees and military personnel of the Armed Forces of the United States for damage to or loss, destruction, capture or abandonment of personal property incident to their service. Some claims were filed with the Commission under Section 303(1) of Public Law 285, 84th Congress, by former prisoners of war, which would have been cognizable under the Military Personnel Claims Act of 1945. However, that Act contained a one-year limitation for the presentation of claims and some claimants failed to present timely claims with the appropriate authorities in 1946 but filed claim with the Commission in 1955-1956. The question arose whether such a claim was compensable under Public Law 285. In the Proposed Decision in the instant claim, the Commission held that losses sustained by military personnel were not compensable under Public Law 285 because such losses were included in the Military Personnel Claims Act of 1945, and this Act was a single, comprehensive remedy for property losses of military personnel incident to their service. From this view one of the Commissioners dissented, stating that nothing in Public Law 285 precluded a claimant, otherwise eligible, from receiving an award under the provisions of Section 303(1) of Public Law 285 solely by reason of the fact that he may have been entitled to compensation for his loss if he had filed a claim under the Military Personnel Act of 1945. In the Final Decision in the instant claim, this latter view was adopted by the Commission and compensation was allowed the claimant for the loss of personal property taken while he was a prisoner of war in Rumania.

In a similar claim, a denial was proposed following the holding in the Proposed Decision in the *Brittain* claim, but subsequently the claim was allowed in the Final Decision based upon the

reversal in the *Brittain* case and upon evidence presented at an oral hearing before the Commission. (*Claim of Louis Chused*, Claim No. BUL-1140, Dec. No. BUL-224, 10 FCSC Semiann. Rep. 21 (Jan.-June 1959).)

Personal injuries resulting from World War II not covered under Section 303.—One claimant alleged that he sustained personal injuries while serving in the Armed Forces of Hungary. The injuries originated from the failure to provide him with immediate medical care and resulted in his physical disability.

The Commission held that this claim was not within the purview of Section 303 of the Act because it did not involve a property loss as contemplated by the treaty of peace with Hungary, nor did it constitute a claim for the nationalization or taking of property. Consequently, this claim was denied. (*Claim of Nicholas Slaninka*, Claim No. HUNG-21925, Dec. No. HUNG-596, 10 FCSC Semiann. Rep. 40 (Jan.-June 1959).)

In the Matter of the Claim of

Claim No. RUM-30828

Decision No. RUM-806

GABOR BANO

Against the Government of Rumania

For purposes of Section 303, Title III of the 1949 Act, ownership of personal property pledged to secure a debt remained in pledgor or general owner throughout the period of the pledge while possession of the property was transferred to pledgee.

Claim denied in part under Section 303(2) because claimant failed to establish that his property was nationalized or otherwise taken by Rumania, or that any "taking" of his property occurred on or after he acquired nationality of the United States.

PROPOSED DECISION

This is a claim for \$4,855,721.00 against the Government of Rumania under Section 303 of the International Claims Settlement Act of 1949, as amended, by GABOR BANO, a national of the United States since his naturalization on November 20, 1946, based upon war damage to and nationalization of the S. A. Industria Lemnului din Bicsad, a Rumanian company, hereinafter called "Bicsad."

Section 303 of the Act provides for the receipt and determination by the Commission in accordance with applicable law, including international law, of the validity and amounts of certain claims against the Governments of Rumania, Hungary, or Bulgaria. The provision relating to claims for property damage or loss as a result of World War II is Section 303(1), which pro-

vides for the receipt and determination of claims of United States nationals for failure of the foreign government to restore or pay compensation for property of nationals of the United States as required by certain referenced articles of the treaty of peace between it and the United States.

Inasmuch as the physical assets of Bicsad were located in Northern Transylvania, the portion of the claim which is based upon war damage thereto could be compensable only as a claim against the Government of Hungary, in view of the provisions of article 24(5) of the treaty of peace with Rumania and article 26(5) of the treaty of peace with Hungary. However, this portion of the claim is not compensable in any event, as will be seen.

With respect to the Hungarian treaty, articles 26 and 27 are those referenced in Section 303(1) of the Act. Article 26 provides for the restoration of rights and return of property of the United Nations and their nationals and for the payment of compensation to United Nations nationals whose property suffered war damage or can not be returned, and United Nations nationality is made to depend either upon nationality in any one of the United Nations on January 20, 1945, the date of the armistice with Hungary, or upon having been treated as an enemy under the laws in force in Hungary during the war. Article 27 requires the restoration of, or compensation for, property which was the subject of measures of sequestration, confiscation or control on account of the racial origin or religion of persons under Hungarian jurisdiction. However, claims under Section 303(1) of the International Claims Settlement Act are restricted by the language of the Act itself to those owned by United States nationals.

Under well established principles of international law, unless otherwise provided by treaty, in order for a claim espoused by the United States to be compensable, the property upon which it is based must have been owned by a national or nationals of the United States at the time of loss, and the claim which arose from such loss must have been owned by a United States national or nationals continuously thereafter.

The rule of international law, its modification by the treaty of peace, and the limitations of Section 303(1) of the International Claims Settlement Act, provide a clear requirement as to the national character of a claim against the Government of Hungary under Section 303(1), if it is to be found compensable; namely, that the claim must have been owned by a national or nationals of the United States on January 20, 1945, and continuously thereafter.

The Commission finds that it has not been established that the claim for war damage to the property of Bicsad was owned by a

national of the United States on January 20, 1945, the date of the armistice with Hungary, and it must, therefore, be denied.

It is urged by the claimant that the above-described requirement is fulfilled herein, inasmuch as the claimant (allegedly the owner of 100% of the stock of Bicsad), though not himself a national of the United States, had delivered all of the stock of Bicsad to Schwabach & Company, a partnership composed principally of United States nationals, in pledge as security for the payment of a debt owed to the partnership by another corporation in which the claimant was a stockholder, and that the stock of Bicsad was so held at the time of the war damage, and was not released to the claimant, upon payment of the debt, until after he had acquired United States nationality. The Commission holds, however, that under these circumstances the claimant retained the general right of ownership of the stock throughout the period of the pledge, and that the partnership did not become the owner thereof so as to satisfy the requirement of ownership by a United States national. Had the debt not been paid, Schwabach & Company would have been entitled to subject the pledge *res* (the stock of Bicsad) to its payment. As pledgee, Schwabach & Company had the right to pursue any remedy which the owner would have had for loss of the property, holding any proceeds thereof in trust for the owner, except for such portion as might be required to pay any portion of the debt defaulted. As shown above, however, the legal owner of the stock had no remedy with respect to the war damage, which might be pursued by the pledgee. In actual result, no loss was suffered by the United States nationals who were partners in Schwabach & Company. The loss as a result of World War II was suffered by the claimant, and is not a loss compensable under Section 303(1) of the Act, in view of his lack of United States nationality on January 20, 1945. Accordingly, this portion of the claim is denied.

The pertinent portions of Section 303(2) of the Act provide, *inter alia*, that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Government of Rumania arising out of the failure to pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to August 9, 1955, of property in Rumania of nationals of the United States.

Compensation under Section 303(2) of the Act depends upon fulfillment of the requirement of international law, mentioned above, that the property upon which the claim is based has been owned by a national of the United States at the time of loss, and

the claim which arose from such loss has been owned by a United States national continuously thereafter.

Prior to November 20, 1946, GABOR BANO, the owner of Bicsad, was not a national of the United States. Consequently, any losses sustained prior to that date cannot be the basis of a compensable claim under Section 303(2) of the Act. Portions of the claim are based upon losses sustained through alleged expropriation of land, fuel wood and locomotives, and the forced sales of lumber for delivery to Russia. The evidence of record fails to establish that any of these losses occurred after November 20, 1946. The Commission concludes that those portions of the claim must be, and accordingly are denied, for lack of United States nationality in the owner of the property at the time of loss.

Another portion of the claim is based upon losses sustained in connection with alleged "compulsory sales of approximately 18,000 cu. meters of beech lumber to England." The record is not clear as to when these losses occurred, the quantity of lumber involved, or whether the lumber belonged to Bicsad or to the Swiss company "Iseli." Moreover, it does not appear that either Bicsad or claimant was forced by the Rumanian Government to export any lumber to England. On the contrary, there are indications that the company experienced difficulties in obtaining export licenses. The manager of the company, George Justus, in a letter to the American Legation, Bucharest, dated December 17, 1947, stated:

Objectivity demands, however, to recognize that, beside these losses there were also positive results booked during the last 2½ years to the advantage of our Company.—

So e.g.—as I have repeatedly had the opportunity to report to you verbally—the Government has granted us, in October 1946, a principal permit to export 9000 m³ of lumber. Of these, 3000 m³ have effectively been exported, while the rest of 6000 m³ from the quantity authorized has been cancelled. Though the export effected failed to bring to our Company the whole gain expected, it was still a very remuneratory operation.— Beside this, we succeeded to get, in October 1947, another permit of export for the 14,500 m³ Swiss (Iseli) owned lumber on our hands. The delivery has, however, not taken place yet, owing to transfer difficulties (the purchaser has had no possibility, so far, to open the credit according to the Government's requirements) but the question took a more advantageous turn in the meantime and—unless obstructed by international complications—the business is likely to become perfectable within a short time. This will free our Company from the burden of an old debt to Switzerland and help us get a substantial supply of new working capital.

Other evidence submitted indicates that the lumber involved in the 1947 contract was not actually shipped until after the company was nationalized, or that even if Bicsad was still the owner, the same lumber might have been included in the assets of the company at the time it was nationalized on June 11, 1948. Claimant asserts in the Statement of Claim herein that such assets included "Approximately 15,000 cu. meters of beech lumber products located at the plants and warehouses of the plants or in transit to England or the Government agencies and which according to the contracts under which they had to be delivered had a value of at least \$50. per cu. m. . . ."

On the basis of the record as presently constituted, the Commission finds that it has not been established that any loss which might have been sustained in connection with sales of lumber to England was attributable to a nationalization, compulsory liquidation, or other taking of property by the Government of Rumania. Accordingly, this portion of the claim is also denied.

With respect to the remaining portion of the claim, the Commission finds that the company Bicsad was nationalized without compensation by the Government of Rumania pursuant to the provisions of Law No. 119 of June 11, 1948. The Commission further finds that the value of claimant's interest in the company at the time of nationalization amounted to Five Hundred Fifty-six Thousand Seven Hundred Fifty Dollars (\$556,750.00), and concludes that he is entitled to an award under Section 303(2) of the Act.

AWARD

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, this claim is allowed in part, and an award is hereby made to GABOR BANO in the amount of Five Hundred Fifty-six Thousand Seven Hundred Fifty Dollars (\$556,750.00) plus interest thereon at the rate of 6% per annum from June 11, 1948 to August 9, 1955, the effective date of the Act, in the amount of Two Hundred Thirty-nine Thousand One Hundred Twenty-four Dollars and Twelve Cents (\$239,124.12).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on his behalf, of any rights against the Government of Rumania for the unpaid balance of the claim, if any.

Dated at Washington, D.C.

May 11, 1959.

Ownership.—Proof of ownership of the subject property was a condition precedent to recovery under Title III of the 1949 Act. This requirement is implicit in the rule of international law which provides that a condition to espousal of a claim is continuous ownership thereof by a national of the espousing nation from the date of its inception. The instant claim, wherein the Commission, in determining issues of ownership, focused on the substance of the purported owner's rights and interests with respect to the subject property and not on the technical question of bare legal title, reflects the Commission's concern for adherence to the requirements of the national character of a claim. This interrelated issue of nationality requirements is discussed in the *Claim of Margot Factor*, appearing at page 168.

In a claim against the Government of Hungary under Section 303 of the 1949 Act, arising out of the asserted loss of property owned by claimant's wife who had filed a separate claim for the same property, the Commission denied recovery to claimant because neither the property nor the claim was owned by him. However, the Commission indicated that his wife's claim would be considered on its own merits. (*Claim of Robert H. Sabel*, Claim No. HUNG-21178, Dec. No. HUNG-633, 10 FCSC Semiann. Rep. 42 (Jan.-June 1959).)

The record in another claim against the Government of Hungary disclosed that claimants each acquired, upon the death of their uncle, a 1/24 interest in real property which was taken by the Government after his death in 1945. At estate proceedings before a Hungarian court in 1946, other heirs, who were not nationals of the United States, "renounced" their inherited interests in favor of claimants, thereby increasing claimants' interests in the estate. The Commission determined that the "renunciation" of these interests constituted an assignment to claimants which was effective as of the date of the renunciation and not as of the date of death of the deceased owner. Accordingly, the award was limited to the interest held by each claimant in his own right, and recovery for the "renounced" portions was denied because such portions were not owned by nationals of the United States on the date of taking. (*Claim of Arthur Dobozy, et al.*, Claim No. HUNG-21300, Dec. No. HUNG-1257, 10 FCSC Semiann. Rep. 55 (Jan.-June 1959).)

The character of an inherited interest was in issue in another claim against the Government of Hungary. Claimant asserted a claim for his mother's entire estate following her death intestate, although she had another surviving son. The record established that claimant's mother had made *inter vivos* gifts of property to the brother which were equivalent to the share he would have acquired pursuant to the intestacy laws. The Commission held that, for the purposes of the claim, claimant was the sole heir of his mother for the reason that under the laws of Hungary such gifts rendered the recipient (claimant's brother) ineligible to inherit upon the death of the deceased owner, in the absence of a will to the contrary. An award issued to claimant for so much of the property remaining in the name of his mother at her death as was lost under circumstances falling within the scope of the Act.

(*Claim of Andrew de Balogh*, Claim No. HUNG-20573, Dec. No. HUNG-1993, 10 FCSC Semiann. Rep. 66 (Jan.-June 1959).)

Burden of proof.—Although the Commission endeavors, to the extent of its resources, to assist claimants in obtaining evidence to establish their claims, the burden of proof remains on the claimant, and a failure of proof may result in denial of a claim in part, as in the *Bano* claim, or *in toto*. In another claim against the Government of Rumania, reference was made to the Commission's Regulations establishing claimant as the moving party and placing on him the burden of proof as to all issues. The Commission held that claimant had not sustained the burden of proof as he had failed to submit evidence supporting critical elements of the claim or to respond to the Commission's suggestions regarding appropriate evidence. (*Claim of Paul Smith*, Claim No. RUM-30259, Dec. No. RUM-143, 10 FCSC Semiann. Rep. 104 (Jan.-June 1959).)

The record in another claim against Rumania under the 1949 Act was barren of evidence of ownership except for claimants' statements that they had a "usufruct" in certain real property which assertedly was taken by the Government. The Commission held that claimants failed to establish that they owned either the property or claims arising out of the loss of property, and recovery was denied. (*Claim of Frank Buhn, et al.*, Claim No. RUM-30039, Dec. No. RUM-328, 10 FCSC Semiann. Rep. 112 (Jan.-June 1959).)

In the Matter of the Claim of

Claim No. HUNG-20367
Decision No. HUNG-2135

**EUROPEAN GAS & ELECTRIC
COMPANY**

Against the Government of Hungary

Rights and concessions to exploit proven reserves of crude oil, gas and other minerals in land not owned by claimant constituted "property" as defined in Title III of the 1949 Act. Results of analytical or engineering method of appraising oil and gas reserves by use of prewar cost experience adjusted to 1948, date of nationalization, subjected to reduction by Commission because costs, prices, taxes and other factors assumed in course of appraisal were not entirely established. Portion of claim for oil exploration rights in undeveloped land denied under Section 303(2) because claimant failed to establish that the rights had a proved or predictable value.

Claim for expenses incurred in effecting return of personal property removed by Germany during World War II denied because it involved neither war damages under Section 303(1), a taking of property under Section 303(2), nor a failure of Hungary to meet its obligations under Section 303(3). Claim based on sup-

plies furnished or services rendered to Allied Powers in Bulgaria, Hungary or Rumania denied because such transactions involved no act for which Bulgaria, Hungary or Rumania was responsible under Section 303. Unilateral action by Bulgaria, Hungary or Rumania fixing the price of oil substantially lower than its actual value did not constitute "nationalization, compulsory liquidation, or other taking" of property within meaning of Section 303(2) in absence of a forced sale of the property at such price.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on May 22, 1959, a copy of which was duly served upon the claimant.

Full consideration having been given to the objections of the claimant, and to the evidence and oral arguments presented at the hearing on July 2, 1959 and to the entire record herein, it is

ORDERED that the Proposed Decision be amended as follows, and that as so amended it be entered as the Final Decision in this claim.

The record shows that claimant owned, directly or beneficially, 100% of the outstanding shares of capital stock of "Hungarian American Oil Company," hereinafter called "Maort," a Hungarian corporation, which in turn owned real and personal property in Hungary. It is also established by the record before the Commission that "Maort" owned a 50% interest in the "Maortgas Marketing Company, Ltd.," a Hungarian corporation which marketed natural gas derivatives in Hungary.

The Commission finds that certain structures and physical assets of "Maort" were damaged and certain pieces of property of "Maort" were totally destroyed as a result of World War II. The Commission also finds that the loss thus actually sustained amounted to \$1,769,795.50 and concludes that claimant is entitled to compensation under Section 303(1) of the Act in the amount of \$1,179,863.66 since under this Section, awards are limited to two-thirds of the loss or damage actually sustained.

The Commission finds that "Maort" was nationalized without compensation by the Government of Hungary pursuant to Decree No. 9,960 1948 Korm, of September 24, 1948. The record shows that "Maortgas Marketing Company, Ltd." was likewise nationalized without compensation by the Government of Hungary. The Commission further finds that the value of claimant's interest in "Maort," not including hydrocarbon reserves, was \$9,515,171.00, and concludes that claimant is entitled to compensation under Section 303(2) of the Act for the nationalization thereof.

Claimant also seeks compensation based upon certain reserves in the subsoil consisting of crude oil, natural gas and gas liquids, in which "Maort" had interests. The record shows that "Maort"

had acquired certain rights and concessions under which it exploited the land covered by the Agreement of 1933 and extracted crude oil, natural gas and gas liquids. In consideration of the rights and concessions, "Maort" invested large sums of money to exploit the lands in question and was obliged to pay royalties, taxes and other charges to the Hungarian Government.

It is concluded that these rights and concessions constituted "property" within the meaning of Section 301(9) of the Act and that such rights and concessions were nationalized without compensation by the Government of Hungary pursuant to Decree No. 9,960/1948, Korm., of September 24, 1948. The record shows that the land in question contained reserves in the approximate amounts of 26,871,700 barrels of crude oil, 72,140,000,000 cubic feet of natural gas and 111,846,000 gallons of gas liquids.

In estimating the value of "Maort's" interest in the reserves, the claimant proposes the analytical or engineering method of appraisal which is widely accepted and used by the oil industry in estimating the value of hydrocarbon reserves in the United States and throughout the world. Under this method, the claimant calculates the present worth value of the reserves at the time of nationalization at \$24,724,389.00. In applying the method claimant has used pre-war cost experience "adjusted" to 1948, has figured sales prices on the basis of a competitive free market and projected these costs and prices over the years to 1974.

The Commission recognizes the validity of the method adopted by the claimant, but is not entirely convinced that all of the assumptions as to the costs, prices, taxes, etc., and particularly the reliance upon their continuance throughout the life of the concession, should be accepted without qualification. In arriving at the market value at the date of nationalization, the Commission is not presently convinced that a buyer in a competitive market would be willing to pay the figure asserted by the claimant. It is concluded that a discounting or downward adjustment of the claimant's figure is indicated and, accordingly, the amount of \$17,307,000.00 is awarded for nationalization of the claimant's reserves.

The claimant also seeks compensation for loss of certain other rights and concessions belonging to "Maort." It appears that these rights and concessions related to certain undeveloped acreage, and a portion of the claim is based upon the taking of said undeveloped acreage. The Commission has consistently held that the burden of establishing all elements of a claim rests with the claimant. It has not been shown that these rights and concessions of "Maort" had any proved or predictable value. Therefore, it is concluded that claimant has not met its burden of estab-

lishing that it sustained any losses with respect to the undeveloped acreage within the meaning of Section 303(2) of the Act, and accordingly, this portion of the claim is denied.

A portion of the claim is based upon the sale of crude oil by "Maort" at prices fixed by the Government of Hungary. Claimant states that the Hungarian Government unilaterally fixed a delivery price for "Maort" crude oil for the year 1947 and from January 1948 to September 1948 of 170 forints per ton, whereas the lowest possible average free market delivery price for Hungarian crude oil was much higher.

Claimant further states that the fixing of such prices by the Government of Hungary was in violation of Clause 11 of the Concession Contract, dated June 8, 1933, which provided that the sales price for crude oil shall be mutually agreed upon by the Hungarian Minister of Finance and "Maort," and in the event of a failure to reach any agreement in this respect, the selling price of the oil products shall be the market prices then prevailing.

The record fails to show and it has not been alleged that the Government of Hungary compelled "Maort" to sell to it any of the oil products involved in this portion of the claim. Claimant has admitted that in 1948, "Maort" actually sold some of the crude oil in question at prices in excess of the 170 forints per ton fixed by the Government of Hungary. The Commission holds with respect to this portion of the instant claim that it has not been established that the circumstances herein constitute war damage within the scope of Section 303(1) of the Act or a nationalization, compulsory liquidation or other taking of property by the Government of Hungary within the meaning of Section 303(2) of the Act. It is to be noted, however, that such holding does not constitute a finding that the actions complained of are not international wrongs which might give rise to liability under the customary rules of international law.

When this portion of the claim is considered under Section 303(3) of the Act, relating to certain claims for the failure to meet certain obligations expressed in currency of the United States, it is found to be not compensable, for the reasons specified in the attached copy of Proposed Decision No. HUNG-1, *In the Matter of the Claim of Vincent I. Varga* (HUNG-20264). Additionally, this portion of the claim is found to be not compensable for the reasons specified in the attached copy of Proposed Decision No. BUL-20, *In the Matter of the Claim of Henry Herbert Gould* (BUL-1174), which is for equal application, *mutatis mutandis*, in similar claims against the Government of Hungary.

Accordingly, this portion of the claim is denied.

The portion of the claim based upon supplies furnished and services rendered to the Soviet Army is denied for the reason that such items do not fall within the purview of Article 26 and Article 27, the only Articles of the treaty of peace with Hungary referenced in Section 303(1) of the Act. In this connection, it is noted that specific provisions are made for such items in Article 32, paragraph 2 of the treaty of peace with Hungary, which is not referenced in Section 303(1) of the Act. Paragraph 2 of Article 32 reads as follows:

The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Hungarian Government agrees to make equitable compensation in Hungarian currency to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Hungarian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Hungarian territory.

It is concluded that the fact that Section 303(1) of the Act references only Articles 26 and 27 of the treaty of peace with Hungary clearly indicates a Congressional intent to include under Section 303(1) only those claims which fall within the purview of the said referenced Articles.

When this portion of the claim is considered under Section 303(2) of the Act, it is found to be not compensable for the reason that the circumstances herein cannot be construed as a taking by the Government of Hungary so as to give rise to a compensable claim thereunder.

A portion of the claim is based upon sales of crude oil made during World War II while "Maort" was under sequestration by the Government of Hungary. Claimant states that the agency of the Government of Hungary, exercising control over "Maort," exported to Germany certain amounts of crude oil belonging to "Maort." This agency paid "Maort" the inland or Hungarian market price and sold the crude oil for prices in excess thereof.

The Commission finds that the circumstances of this portion of the claim do not constitute a nationalization, compulsory liquidation or other taking of property within the meaning of Section 303(2) of the Act. Moreover, the Commission finds that it has not been established that the claimant suffered any loss by reason of the aforesaid acts. Accordingly, this portion of the claim is denied.

Claimant seeks compensation for certain expenses incurred in effecting a return of certain property of "Maort" from Germany. The record shows that the property in question was taken out of

Hungary by the German Army and brought into Germany. After cessation of hostilities, representatives of "Maort" located the property in Germany and incurred expenses in returning it to Hungary, including the payment of import duties.

The Commission finds that this portion of the claim does not involve a property loss as contemplated under Articles 26 and 27, the only Articles of the treaty of peace with Hungary referenced in Section 303(1), nor does it constitute a nationalization or other taking of property within the meaning of Section 303(2) of the Act; and the circumstances herein do not give rise to a claim for the failure of the Government of Hungary to meet its contractual obligations expressed in currency of the United States, one of the prerequisites of Section 303(3) of the Act. For the foregoing reasons, this portion of the claim is denied.

The Commission deems it unnecessary to make determinations with respect to other elements of the portions of the claim denied herein.

AWARD

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, the claim is allowed in part, and an award is hereby made to the EUROPEAN GAS AND ELECTRIC COMPANY in the amount of Twenty-eight Million Two Thousand Thirty-four Dollars and Sixty-six Cents (\$28,002,034.66) plus interest upon that portion of the award granted pursuant to Section 303(2) at the rate of 6% per annum from September 24, 1948 to August 9, 1955, the effective date of the Act, in the amount of Eleven Million Sixty-eight Thousand Six Hundred Fifteen Dollars and Eighty-two Cents (\$11,068,615.82).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on its behalf, of any rights against the Government of Hungary for the unpaid balance of the claim, if any.

General notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that the Proposed Decision, as amended herein, be and is hereby entered as the Final Decision on this claim, and it is further

ORDERED that the award granted herein be certified to the Secretary of the Treasury.

Dated at Washington, D.C.
July 24, 1959.

Special property rights.—As a prerequisite to an award under Section 303 of the 1949 Act, claimant must have had an ownership interest in “property” as contemplated by the Act, as to which a loss was suffered within the scope of Section 303. Section 301(9) defines “property” as “any property, right, or interest.” In the instant claim, claimant’s wholly owned Hungarian subsidiary had rights and concessions to exploit land, the subsoil of which contained proven reserves of crude oil, natural gas and gas liquids. Such rights and concessions were found by the Commission to constitute property within the meaning of Section 301(9). Claimant had invested large sums of money in the exploitation of the land, and established that it contained proven reserves in ascertainable amounts. A standard method of evaluation for hydrocarbon reserves was available, moreover, to calculate the dollar value of claimant’s losses. On the other hand, the loss of rights and concessions in certain other undeveloped acreage was not compensated because claimant did not show that such rights and concessions had any proved or predictable value.

In addition to compensation for the loss of real property of which she was the record owner, a claimant received an award for her right of usufruct in real property in Miskolc, Hungary, which was found to have been lost when the property was nationalized in 1952. The right of usufruct was “property” within the meaning of Section 301(9) of the Act. The value thereof was computed by use of the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939–1941, and a 3½% interest rate, compounded annually. (*Claim of Vilma Ferenc*, Claim No. HUNG–20151, Dec. No. HUNG–966, 10 FCSC Semiann. Rep. 52 (Jan.-June 1959).) Similarly, the Commission found in another claim that claimant’s remainder interests in several properties in Budapest formed a valid basis for her claim and her interests were evaluated by deducting the values of the life estates from the total value of the property at the time of loss. (*Claim of Marietta Kovesi Kuper, et al.*, Claim No. HUNG–22197, Dec. No. HUNG–2044, 10 FCSC Semiann. Rep. 70 (Jan.-June 1959).)

In a claim against the Government of Bulgaria, claimant alleged that he had advanced money to his father and brother for the purpose of purchasing a lot in Sofia and erecting a building thereon, that he later satisfied a mortgage against the property and received a “letter of release and purchase” from his brother and father, but subsequently learned that the property had been sold without his knowledge or receipt of any proceeds by him. The claim was denied as based upon a private transaction involving no act or failure to act for which Bulgaria was responsible under the statute. (*Claim of Lazar George*, Claim No. BUL–1006, Dec. No. BUL–138, 10 FCSC Semiann. Rep. 15 (Jan.-June 1959).)

In another claim it was asserted that by virtue of a decree issued by the Government of Rumania in 1938 rendering American citizens resident in Rumania ineligible for employment there, the claimant suffered a loss of earnings during the succeeding eight-year period. The Commission held that there had been no loss of or damage to property belonging to claimant, nor was

there a claim based upon an obligation of the Government of Rumania expressed in United States currency as set forth in Section 303(3) of the Act. (*Claim of Anna Ide*, Claim No. RUM-30441, Dec. No. RUM-375 (Final Decision), 10 FCSC Semiann. Rep. 113 (Jan.-June 1959).) Likewise, a claim based upon an interference with private contracts through the revocation in 1948 of a license to exhibit American motion pictures in Hungary was found not to have been within the provisions of the Act. (*Claim of Motion Picture Export Association of America*, Claim No. HUNG-21133, Dec. No. HUNG-1652, 10 FCSC Semiann. Rep. 62 (Jan.-June 1959).)

Forced sales.—A portion of the instant claim was based upon sales during 1947 and 1948 of crude oil by claimant's Hungarian subsidiary at prices fixed by the Government of Hungary. Claimant asserted that the lowest possible average free market delivery price for Hungarian crude oil was much higher than the fixed price, and that such price fixing was a violation of the concession contract. The Commission found, however, that claimant had failed to show that its subsidiary was compelled to sell its oil products at such fixed prices and the record indicated, moreover, that some crude oil was actually sold at prices higher than those fixed by the Government of Hungary, and this portion of the claim was denied. In another claim based upon similar losses, on the contrary, compensation was made. There, the Commission found that claimant's Rumanian subsidiary was forced to sell to the Government of Rumania certain oil products at prices fixed by that government, and that the prices thus fixed were substantially lower than the value of such oil products. Losses were sustained as a result of such forced sales and the action of the Rumanian Government constituted a taking of claimant's property within the meaning of Section 303(2) of the Act. (*Claim of Standard Oil Company*, Claim No. RUM-30140, Dec. No. RUM-813, 10 FCSC Semiann. Rep. 128 (Jan.-June 1959).) Together, these two claims illustrate that prewar and wartime conditions in central Europe alone were insufficient to establish that business transactions at the time were made under duress. It was necessary to show not only that the transaction was compelled but also that loss resulted.

Claimant in another case asserted that in August 1940, before returning to the United States, he had to sell his household effects and belongings in Bucharest at a very low price and that the loss he suffered thereby arose out of World War II. Although under Article 24 of the treaty of peace with Rumania that government was under a duty to restore rights and interests, and return the property of nationals of the United States, or to compensate where property in Rumania had been injured or damaged, not all losses suffered in transactions in Rumania were to be made good. The Commission found, on the contrary, that losses sustained by a United States national in transactions during the war which were entered into as a matter of discretion were not the responsibility of the Government of Rumania. The record indicated that claimant had sold his belongings in Bucharest below their real market value in order to avoid transportation costs to the United States and because he would not have room for them

here. The Commission stated that the mere fact that the disadvantageous sale was made in an unfavorable market did not result in a claim against the Government of Rumania. (*Claim of Hugo Peter Rudinger*, Claim No. RUM-30326, Dec. No. RUM-101, 10 FCSC Semiann. Rep. 98 (Jan.-June 1959).)

In another claim based upon losses assertedly a result of the liquidation of a partnership due to Hungarian anti-Jewish laws of 1939, the Commission found nothing in the legislation to compel the sale of interests in the partnership. Although the liquidation may have been motivated by the anti-Jewish climate of the time and place, it did not appear that the liquidation or any attendant loss resulted directly and unavoidably from the legislation which preceded it. The Commission held that compulsory liquidation within the meaning of Section 303(2) of the Act is that which is specifically and directly compelled by government utterance, so that the liquidation in compliance therewith is mandatory, and not an act of discretion on the part of those affected. Claimant was unable to show that the liquidation of the partnership in which he held an interest was in required compliance with governmental decree; and the claim was denied. (*Claim of Eugene Joseph Vayda*, Claim No. HUNG-20900, Dec. No. HUNG-709.)

In the Matter of the Claim of

Claim No. HUNG-20016
Decision No. HUNG-667

ERNIE DAVE TURNER, ET AL.

Against the Government of Hungary

Effective date of "taking" of property in Hungary under Decree No. 4-1952 was February 17, 1952, date of publication of decree. Awards under Section 303(2) measured by value of the property at the time of loss, and increased by interest at rate of 6% per annum from date of taking to August 9, 1955, effective date of the statute.

Claim for loss of rental income accruing after nationalization denied under Section 303(2) because such income belonged to the State.

PROPOSED DECISION

This is a claim under Section 303(2) of the International Claims Settlement Act of 1949, as amended, for \$9,100.00 by ERNIE DAVE TURNER and LINA TURNER, nationals of the United States since their naturalization in the United States on November 18, 1946 and April 22, 1946, respectively, for nationalization of property in Hungary, and for loss of rental income therefor.

The Commission finds that each of the claimants owned an

undivided one-half interest in certain portions of community apartment buildings described as 26b Bercsenyi utca, Budapest XI, 1st floor No. 2, and 87 Bartok Bela ut, Budapest XI, 2nd floor No. 2b, which were nationalized without compensation by the Government of Hungary on February 17, 1952 pursuant to Hungarian Law-Decree 1952:4 *trr.* (Official Gazette No. 18, February 17, 1952). The Commission further finds that the value of the property taken was five thousand seventy-one dollars and eighty-five cents (\$5,071.85); and concludes that claimants are entitled under Section 303(2) of the Act to awards totalling that amount.

The claim for loss of rent is denied, inasmuch as the property belonged to the State after February 17, 1952, rather than to the claimants. However, the claimants were entitled, on the date the property was taken, to compensation in an amount equal to the value of the property. Thus, they have suffered the loss of the use of the money they were entitled to receive on February 17, 1952. Such loss of use can be compensated for in terms of interest and the Commission concludes that interest should be allowed on the award at the rate of 6% per annum from the date of loss to August 9, 1955, the effective date of Section 303.

AWARDS

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, an award is hereby made to ERNIE DAVE TURNER in the amount of two thousand five hundred thirty-five dollars and ninety-three cents (\$2,535.93) plus interest in the amount of five hundred twenty-eight dollars and fifty-eight cents (\$528.58); and an award is made to LINA TURNER in the amount of two thousand five hundred thirty-five dollars and ninety-two cents (\$2,535.92), plus interest in the amount of five hundred twenty-eight dollars and fifty-eight cents (\$528.58).

Payment of any part of these awards shall not be construed to have divested the claimants herein, or the Government of the United States on their behalf, of any rights against the Government of Hungary for the unpaid balance of the claim, if any.

Dated at Washington, D.C.
November 20, 1957.

In the course of determination of claims under Section 303(2) of the 1949 Act, based upon the "nationalization, compulsory liquidation, or other taking . . . of property of nationals of the United States in Bulgaria, Hungary, and Rumania," the Commission accumulated considerable information concerning the pattern of the taking of property in those countries. A resume follows.

Nationalization or other taking of property in Bulgaria.—As in most Eastern European countries, expropriation of property was initiated by Land Reform Legislation. By Law of April 9, 1946 a maximum limit of acreage was established for owners of farmland. This limit was usually about 50 acres. All property in excess of such limit was expropriated. The Law provided for payment of compensation in State bonds, payable within 15 years. This Law was amended several times. The amendments provided for the expropriation of agricultural equipment and farm machinery and for the nationalization of forest land and forest pastures. Within 10 years most of the more productive farms in Bulgaria had been expropriated and turned over to the administrators of cooperatives or to state farms.

By Law of December 27, 1947 all private banks were nationalized. The assets and liabilities of the banks were transferred to two State banks. The nationalization and transfer did not affect creditors' rights. The former stockholders of the banks were assured that they would receive compensation in state bonds. Stockholders of foreign nationality were to be paid "according to mutual agreements." In fact, domestic stockholders received very little, if any, compensation, and foreign owners, as a rule, received nothing. Under laws which were enacted subsequently, accounts of former merchants and industrialists were confiscated.

At the same time, by Law of December 27, 1947, almost all private industrial and mining enterprises were nationalized. The former owners of nationalized enterprises were to receive from the State an indemnity in State bonds, but such indemnity was to be computed by law on a percentage basis of the assessed taxable value of the enterprise.

Enterprises which were not nationalized by the Law of December 27, 1947, were either liquidated or taken over by the State under various individual laws and decrees enacted after the aforesaid Law. The liquidation of wholesale and retail trade enterprises began with the enactment of the Law of December 3, 1948, and remaining commercial companies were dissolved on September 25, 1951. An edict of the Bulgarian Government of February 20, 1952 stated that wholesale commerce was a monopoly of the State and that retail commerce operated by private persons would be tolerated under exceptional circumstances only.

A Law of March 8, 1948 expropriated urban real property which was used mostly for purposes of income. This Law nationalized all real property in urban districts owned as an investment. The owners of such expropriated property were assured of compensation to be paid in State bonds. However, such indemnity was to be computed on a percentage basis of the assessed value of the real property for tax purposes. If paid, such compensation

in bonds amounted actually to a small fraction of the value of the property, because under the law the higher the value, the lower was the percentage paid by the Government.

A Law of November 16, 1951, authorized the Government to expropriate any property, real or personal, of farm cooperatives and of public organizations and enterprises, to meet particularly important needs of the State.

By 1956, Bulgaria had nationalized all financial, industrial and trade enterprises, with the exception of smaller shops. It also nationalized or confiscated all larger buildings in cities and towns, and all larger and better agricultural estates. The majority of farms and all forest land was in the hands of the Government, of farm cooperatives, machine tractor stations, etc. The trend was toward the collectivization of all or nearly all productive farms.

Nationalization or other taking of property in Hungary.—Expropriation of property in Hungary started with measures called Agrarian Reform Legislation. Decree No. 600 1945 M.E. of March 15, 1945, as incorporated into Law 1945: VI, as of September 16, 1945, provided for expropriation of large estates (of more than approximately 1400 acres). Smaller estates were broken up, and the former owners were allowed to retain land amounting to something less than 150 acres (in some areas 75 acres). The decree provided for the payment of compensation, except in cases where the former owners were war criminals or German collaborators. However, all payments were deferred and actually no compensation ever was paid. Property owned by Germans or by citizens of German descent was confiscated outright by Decree No. 12330 1945 M.E. of December 29, 1945.

By Law No. IX of May 10, 1946, unimproved land in areas suitable for house building was declared subject to condemnation by the government. The Law provided for compensation, but again compensation was never paid.

Law No. XIII of June 7, 1946 ordered the nationalization of coal mines, and Law No. XX of September 2, 1946, the nationalization of electric power stations and electric works.

The major industrial enterprises were placed under the direction of appointed government administrators by individual decrees beginning in 1945. By Law No. XXV of April 26, 1948, the major Hungarian enterprises were nationalized and became property of the State. This Law was amended by Law-Decree 20 1949 *trr.* of December 28, 1949 which provided for the nationalization of the remaining private industrial enterprises, except for those which employed less than 10 persons. The principle of compensation was expressed in both Law No. XXV and Law-Decree 20, but no compensation was actually paid, except to certain foreign countries (such as Switzerland) in lump-sum agreements for the indemnification of citizens of such countries.

Banks were nationalized by Law No. XXX of December 1, 1947. Creditors' rights were not directly affected by the nationalization of banks, but due to the total depreciation of the value of the currency of Hungary during 1945 and 1946, the creditors remained actually unpaid for all credits and claims which accrued prior to August 1, 1946. The principle of compensation to the

former owners or shareholders of banks was recognized, but nothing was done to give practical effect to the payment of compensation.

Private wholesale and retail mercantile enterprises were not formally nationalized, but various decrees ordered the transfer of assets of such enterprises to appropriate government enterprises for liquidation. In addition, Decree No. 19/1950 *M.T.* of January 18, 1950 made wholesale trade a monopoly of the State. By the same decree retail trade was restricted to the smallest enterprises. The liquidation of commercial enterprises was carried out by the corresponding State retail enterprises and stores.

Property of political emigrants abroad was confiscated by Law 1948:XXVI *tv.*, and so-called "abandoned property" was seized by Law 1948:XXVIII *tv.* These laws were directed against property of absent owners who had left Hungary for political or for any other reasons. A series of decrees issued between 1948 and 1950 nationalized or liquidated smaller private enterprises, businesses, schools, hospitals, museums and similar economic, cultural and welfare institutions.

By Law-Decree 4/1952 *tvr.* of February 17, 1952, all privately owned buildings which had been utilized for rental purposes and buildings owned by former "capitalists," were nationalized, including the personal property of the owners found in such buildings. No compensation was paid for this property, even though the principle of compensation was recognized in the decree.

By 1956, with the exception of the smallest stores and shops, all industry and trade in Hungary had been nationalized or liquidated. All larger farms, buildings, all commerce at the wholesale and retail level, all schools, hospitals, laboratories, etc., were government-owned. Still not nationalized were small private homes for the use of individual owners, and small farms. There was, however, a strong tendency to bring all productive farms into State or farmers' cooperatives, and this tendency progressed from year to year.

Nationalization or other taking of property in Rumania.—In Rumania, expropriation of property started with an attempt to nationalize agricultural property belonging to persons described as absentees or collaborators with the Germans. In addition, all real estate exceeding 50 hectares was nationalized without compensation to the former owners. (Law No. 187 of March 22, 1945.)

Certain land on well established farms, called "model farms," was exempt from the nationalization provisions. However, by Law No. 83 of March 1, 1949, such model farms were also nationalized, as well as the 50 hectares of land which had been left to those whose land was expropriated under Law No. 187 of March 22, 1945. No compensation was paid to such owners.

Forest land and enterprises were expropriated under Law No. 359 of November 14, 1947, which gave authorization to the appropriate authorities to take over forest properties.

By Law No. 119 of June 11, 1948 all major industrial enterprises were nationalized. While the Law contains certain provisions for compensation, mainly by the issuance of government

bonds, actually no compensation was ever paid to the owners or shareholders of nationalized industrial enterprises. However, the Rumanian Government entered into negotiations with a few foreign countries (such as Switzerland) and made agreements for lump-sum payments to those countries on behalf of the foreign owners of nationalized Rumanian enterprises.

Separate laws were enacted for the nationalization of minor industrial and cultural enterprises (motion picture companies, chemical-pharmaceutical laboratories, pharmacies, schools, etc.).

By Law No. 197 of August 12, 1948 the Rumanian Government ordered the dissolution and liquidation of banks and of credit institutes. The law ordered that all assets of the banks should be sold, all claims collected and obligations of the banks paid. The National Bank of Rumania was empowered to carry out the liquidation. The creditors of the banks were deprived to a great extent of their claims, because the domestic currency, the "leu," had lost almost all of its value and a new unit, the "stabilized leu," was introduced, which was exchanged for old lei at the ratio of 20,000:1. In addition, the exchange of old money to new currency was restricted to an amount of 5,000,000 old lei at the most. The owners and shareholders of the banks received nothing as a result of the liquidation of the banks.

By Decree No. 92 of April 19, 1950, all buildings that belonged to former industrialists, landowners, bankers, major merchants and other members of the former propertied classes, were nationalized, as well as all buildings held for rental purposes, all abandoned, damaged, wrecked and improperly managed houses, and all hotels. Compensation for the nationalized buildings and houses was expressly excluded by the law.

By a Decree No. 111 of July 17, 1951, all "abandoned property" was confiscated, which included properties whose owners were absent for any reason whatsoever for more than one year, as well as certain categories of other properties whose owners could not exercise their property rights. This Decree and a number of preceding and subsequent governmental measures expropriated practically all business enterprises, including shops and the wholesale and retail trade.

By 1956, with the exception of the smallest stores and shops, all industry and trade in Rumania was nationalized. All larger agricultural estates, all larger buildings, all health institutions, hospitals, schools, etc., were government owned. However, under various restrictions imposed by the government, a good number of farms were still owned individually by farmers, but there was a growing trend toward collectivization of all productive farms into cooperative agricultural units or state farms.

Effective date of taking of property.—In all claims based upon a taking of property, the date of taking was an essential element to be established, not only as a beginning date for the computation of interest where awards were granted, but also for determination of the validity of the claim, in view of the requirement of ownership of the property by a national of the United States at the time of loss. In many cases where the property owner did not become a United States national until after the date of taking, or the claim was inherited by a United States national after the

date of taking, it was urged upon the Commission that the circumstances warranted finding that the claim did not arise until a later date. In any event, Section 303(2) encompassed only claims based upon the failure to pay compensation for the taking of property "prior to the effective date of this title," which was August 9, 1955. Accordingly, where a claim was based on interests in property taken by the Government of Rumania in 1956, the claim was denied. (*Claim of Fanny Margoshes, et al.*, Claim Nos. RUM-30479 and RUM-30660, Dec. No. RUM-246, 10 FCSC Semiann. Rep. 105 (Jan.-June 1959).)

Generally, the effective date of taking was the date of the publication in the official journals and papers of the controlling Decree or Law.

As indicated in the annotations to *Claim of Margot Factor*, appearing on page 169, despite the contention of one claimant that his claim did not arise until the expiration of a reasonable time after his property was nationalized, during which time no compensation had been paid, the Commission denied the claim on the ground that the property had not been owned by a United States national on the date of taking thereof. (*Claim of Hermann F. Broch de Rothermann*, Claim No. HUNG-21100, Dec. No. HUNG-1889 (Final Decision), 10 FCSC Semiann. Rep. 85 (Jan.-June 1959).)

Similarly, the Commission found that a claimant's farmland had been taken by the Government of Hungary pursuant to the Decree of March 15, 1945. Claimant contended that November 13, 1945, the date of a decision under which his application for restoration was denied, should be deemed the date of taking. The Commission found no merit in claimant's contention, commenting that the decision of November 13, 1945 reflected that the property had already been taken pursuant to the earlier Decree, and was a mere denial of the return of property which already had been lost. (*Claim of Michael Alexander Patton*, Claim No. HUNG-21198, Dec. No. HUNG-1786, 10 FCSC Semiann. Rep. 63 (Jan.-June 1959).) Insofar as the principle recited herein is concerned, the Proposed Decision was affirmed upon the entry of a Final Decision.

Another claimant stored certain items of her personal property with a storage concern in Hungary. The property was seized by the Office of the Commissioner for Abandoned Property on a date prior to the time when claimant became a national of the United States. An order was issued by the State for the return of the property on a date subsequent to claimant's United States naturalization, but none of the property was ever returned to claimant. The Commission found that the claimant was permanently deprived of possession, control and dominion over her property at the time of the seizure by the Office of the Commissioner for Abandoned Property, and that the date of such action constituted the date of taking. The fact that the authorities issued a subsequent order for the return of the property did not advance the date of taking. (*Claim of Sabine G. Helbig*, Claim No. HUNG-20590, Dec. No. HUNG-941, 10 FCSC Semiann. Rep. 51 (Jan.-June 1959).)

However, there were instances in which the Commission could

look beyond the effective date of a decree and determine, from other evidence, the true date of taking of property. A claimant placed his art collection in the custody of the Hungarian National Museum of Fine Arts on June 5, 1948, just prior to coming to the United States on July 29, 1948. In 1949, the Government of Hungary enacted Law Decree 1949:13 *trr.* which provided that private art collections should be preserved by the owners and made available to the public, and further provided that such collections could be taken by the State if it appeared they could not be so maintained. Subsequent to his naturalization on March 22, 1954, under date of December 17, 1954, claimant requested the return of his collection, and on February 18, 1955 the Museum replied, stating that art objects under the protection of the above-mentioned Law Decree 1949:13 *trr.* could not be exported from Hungary. Thereafter on March 20, 1956, claimant asked whether it would be possible to turn the collection over to another person in Hungary, but was advised by the Ministry of National Culture on June 27, 1956 that the pictures could not be removed from the Museum even if they remained in Hungarian territory. The Commission found that the governmental action placing a private art collection in a museum and prohibiting its return to the owner constituted "other taking" of property under the Act, and determined that the date of taking was not the date of the publication of the decree but rather February 18, 1955, the date of notification from the State that the art collection could not be exported from Hungary. (*Claim of Geza Danos*, Claim No. HUNG-21487, Dec. No. HUNG-1004 (Amended Proposed Decision), 10 FCSC Semiann. Rep. 56 (Jan.-June 1959).)

There were other situations in which the taking was not predicated upon a specific Decree or Law. In some instances the Commission examined the actions affecting the subject property and determined that the property had, to all intents and purposes, been taken. This was true even in claims where, according to the public records, title had not passed from the record owners. A claimant owned an interest in four acres of vineyard and five acres of farmland in Hungary, and two threshing machines. In 1949 the Government of Hungary evicted the owners' tenant from the land and took the threshing machines, thereafter utilizing the property in a farmer's cooperative, without compensation. The Commission noted that such cooperatives were under strict governmental control and were an integral part of Hungary's land reform program leading to the absorption of the land into State ownership. The Commission found that such action constituted a taking of property within the meaning of the Act even though the taking was not effected through a specific decree. (*Claim of Malvin Klein, et al.*, Claim No. HUNG-21262, Dec. No. HUNG-1123, 10 FCSC Semiann. Rep. 53 (Jan.-June 1959).)

Again, where the Government of Hungary prohibited the sale of a dwelling or the placing of liens thereon, and precluded the owners from occupying the premises, such acts constituted a taking of the property notwithstanding that the record title to claimant's property had not been transferred to the State. (*Claim of Albert Bela Reot*, Claim No. HUNG-22083, Dec. No. HUNG-1625, 10 FCSC Semiann. Rep. 61 (Jan.-June 1959).) In

a similar factual situation, the Commission held that although claimant remained "endowed with the indicia of ownership," nevertheless his property had been effectively taken from him within the meaning of Section 303(2) of the Act, and granted an award. (*Claim of Jenö Hartmann*, Claim No. HUNG-20068, Dec. No. HUNG-717, 10 FCSC Semiann. Rep. 45 (Jan.-June 1959).)

Other taking.—The statute provided for the "nationalization, compulsory liquidation, or other taking" of property. Where claimant was the indirect owner of all of the outstanding capital stock of a Rumanian corporation whose assets were taken under the control of the Government of Rumania in 1946, taken by occupation authorities in 1947, and acquired by the Government of Rumania in 1954 and held continuously thereafter by Rumania, the Commission held that the property had been taken by the Rumanian Government in 1946, quoting from page 5 of Senate Report No. 1050, 84th Congress, 1st Session, as follows: "The phrase 'other taking' in paragraph 2 of this section would also appear to include takings of American-owned property in the satellite countries by occupation authorities, which property was subsequently acquired and is presently held by the satellite governments. The precise means by which they attained control over such property would seem to be immaterial." (*Claim of Estate of Siegfried Arndt, Deceased*, Claim No. RUM-30007, Dec. No. RUM-810, 10 FCSC Semiann. Rep. 131 (Jan.-June 1959).)

This is to be distinguished from a claim in which the assets of a Rumanian corporation were sequestered and taken under control by the Government of Rumania in October 1944, and not returned thereafter to claimant, the indirect owner of all of its capital stock, as required by article 24 of the treaty of peace with Rumania. There, an award was granted under Section 303 (1) of the Act, which limited such award to two-thirds of the loss actually sustained. (*Claim of United Shoe Machinery Corporation*, Claim No. RUM-30269, Dec. No. RUM-816, 10 FCSC Semiann. Rep. 131 (Jan.-June 1959).)

Loss of rent.—The *Turner* claim also provides an example of the Commission's denial of a portion of a claim based upon loss of rent from property after the time of its nationalization. Although awards were made to claimants for the value of their interests in apartment buildings at the time of taking, they were denied compensation for loss of rent from the buildings thereafter on the ground that the buildings then belonged to the Hungarian Government. The Commission pointed out, however, that the inclusion in the awards of interest at 6% per annum from February 17, 1952, the date of nationalization, would represent compensation for the loss of use of the money they should have received for the taking of the property on that date. For a further discussion of inclusion of interest in awards under Section 303, see the annotations to *Claim of George H. Earle, III, and United States of America*, appearing at page 190.

Against the Government of Hungary

Claim based on deposits in Hungarian banks denied under Section 303(2), Title III of the 1949 Act because deposits were not subjected to "nationalization, compulsory liquidation, or other taking" by Hungary. Nationalization of banks by Hungary did not curtail or abolish any rights of bank depositors. Claimant's losses resulted from economic conditions causing devaluation of Hungarian currency.

Prohibition against transfer of funds outside of a country, and blocking of bank accounts, are exercises of sovereign authority which do not constitute a "nationalization, compulsory liquidation, or other taking" of property under Section 303(2).

PROPOSED DECISION

This is a claim against the Government of Hungary under Section 303 of the International Claims Settlement Act of 1949, as amended, by JOZSEF CHOBADY based upon an alleged deposit in 1926, of 102,000 *korona* in a savings account with the *Magyar-Olasz Bank R.T.* (Hungarian-Italian Bank, Ltd.).

The only provision of Section 303 of possible application herein is Subsection (2), which provides for the receipt and determination of claims against the Government of Hungary, among others, for its failure to—

pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title [August 9, 1955], of property of nationals of the United States in . . . Hungary. . . .

It is concluded that the grievance of the claimant is the consequence of severe currency devaluation and restrictions on the transfer of currency out of Hungary brought about by general economic conditions rather than by any specific action of the Hungarian Government which may be characterized as a "nationalization, compulsory liquidation, or other taking" of claimant's property within the meaning of the Act.

In 1925, subsequent to the making of the *korona* deposit which forms the basis of this claim, in recognition of the depreciation of the currency, a new currency, the *pengo*, was introduced in Hungary by Law 1925:XXXV *tc.*, providing for an exchange ratio of 12,500 *korona* for one *pengo*. On this basis claimant's 102,000 *korona* became the equivalent of 8.16 *pengo*.

While Law 1928:XII *tc.* provided for the revaluation of certain money debts within the period of one year, debts based on savings

and checking accounts were expressly excluded from operation of the Law by Section 4 thereof.

There followed a gradual loss of value of the *pengo* ending in complete collapse of that currency so that with the establishment of the *forint* on August 1, 1946, the exchange ratio between the *pengo* and *forint* was 400 octillion (*negyszazquadrillio*) to one.¹ The *pengo* had entirely lost its value. Thus, claims for deposits in *pengo* or *korona* are claims expressed in a completely destroyed, valueless currency. While the currency devaluation caused economic loss to a great many individuals holding such currency, in or out of banks, it was not a nationalization, compulsory liquidation, or other taking of property by the Government of Hungary. Such loss was the result of tremendous damage inflicted upon the Hungarian economy, principally by the war and post-war conditions, and not of any action by the Government of Hungary giving rise to a compensable claim under the Act.

The record contains no evidence of a confiscation, nationalization, compulsory liquidation, or other taking by the Government of Hungary of the bank accounts of the claimant, as distinguished from the bank which was not the property of the claimant. This is true, notwithstanding the fact that Law 1947:XXX *tv.*, as amended, and implemented, provided for the nationalization of banking institutions and as a consequence of such provisions, accounts of certain banks were taken over by other banks. There is no evidence that the rights of depositors were curtailed or abolished by such actions.

Likewise, a prohibition against transfer of funds outside of a country is an exercise of sovereign authority which, though causing hardship to nonresidents having currency on deposit within the country, may not be deemed a "taking" of their property within the meaning of Section 303(2) of the Act.

Accordingly, claimant having failed to establish any action on the part of the Government of Hungary which amounts to "nationalization, compulsory liquidation, or other taking" of his property, within the meaning of the Act, the claim is denied. The Commission finds it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D.C.
February 5, 1958.

¹ Decrees 9,000/1946. (VII.28.) *M.E.* and 8,640/1946. (VII.29.) *M.E.*

Devaluation—Monetary reform.—Due to economic conditions prevailing during World War II and in the years immediately thereafter, the domestic currencies of Bulgaria, Hungary, and Rumania suffered a drastic loss of purchasing power. During the period of 1946–1952 these currencies became practically worthless. A short history of these currencies during and after World War II follows:

Bulgaria.—Prior to World War II the official rate of exchange between Bulgarian leva and United States dollars was approximately 84 leva to one dollar. In addition, the National Bank of Bulgaria purchased and sold foreign exchange at rates considerably above the official rate. In 1946 an official exchange rate of 288 leva to one United States dollar was established and such rate of exchange, even though a fictitious one, remained in effect until 1952. (I International Financial Statistics 139 (No. 3, March 1948).)

The Decree of the Council of Ministers of March 5, 1946 (Official Gazette No. 54 of March 8, 1946) ordered the withdrawal of bank notes and of certain bonds from circulation. Against the deposited bank notes the depositors were entitled to receive not more than 2,000 leva of new bank notes. All debts arising before or after the Decree of March 5, 1946 had to be paid with new bank notes.

On May 11, 1952 the Council of Ministers and the Central Committee of the Bulgarian Communist Party issued a decision on Monetary Reform (Decree No. 405, Official Gazette No. 40 of May 11, 1952). The new exchange rate for the United States dollar was \$1 for 6.80 leva. Internally the exchange of the old money for the new was entrusted to the Bulgarian National Bank and was to be completed between May 12 and May 15, 1952. The rate of exchange for cash was established at a ratio of 100 old leva for one new lev. (Foreign Commerce Weekly of June 23, 1952.) The rate of exchange applied to obligations from salaries, premiums, taxes, debts and contractual obligations between enterprises, government agencies and organizations, to payments by private persons to the government as well as to contractual obligations and debts between the Bulgarian National Bank and foreign countries, was established at the ratio of 100 to 4. For savings accounts, sliding scales were adopted. Bank deposits were divided into three categories:

(1) Deposits of workers, children, orphans and students which were payable up to 50,000 leva at the ratio of 100 to 4, from 50,001 to 100,000 leva at the ratio of 100 to 3, and over 100,000 leva at the ratio of 100 to 2.

(2) Savings deposits originating from rents were payable up to 200,000 leva at the ratio of 100 to 3, and over 200,000 leva at the ratio of 100 to 2.

(3) All other deposits were payable up to 50,000 leva at the ratio of 100 to 3, from 50,001 to 100,000 leva at the ratio of 100 to 2, from 100,001 to 200,000 leva at the ratio of 100 to 1½, and over 200,000 leva at the ratio of 100 to 1.

A similar sliding scale was later adopted by the Edict of November 4, 1953 (Official Gazette No. 90 of November 10, 1953) for all obligations between private persons. While the general

rule remained that 4 new leva should be paid for obligations of 100 old leva, under special circumstances (not further defined), the debtors were able to discharge their debts up to 50,000 old leva at the ratio of 100 to 3, from 50,001 to 100,000 old leva at the ratio of 100 to 2, from 100,001 to 200,000 old leva at the ratio of 100 to 1½, and over 200,000 leva at the ratio of 100 to 1.

Hungary.—Prior to World War II the official rate of exchange between the Hungarian pengo and the United States dollar was approximately 3.5 pengos for one dollar. After World War II the value of the pengo collapsed, and by June 30, 1946, its value was practically zero (1,835 billion pengos were equal to one dollar). On August 1, 1946 a new currency, the forint, was introduced and its value was established at 11.83 forints to one United States dollar. No exchange rate between the old and new currency was ever established. (1 International Financial Statistics 146 (No. 3, March 1948).)

The Government of Hungary failed to enact any general statute for the revaluation of claims expressed in the former currency. Decree No. 13110/1948 (XII.24) *Korm.* allows only revalorization of claims for the support of a person, for damages originating in tort, claims depending on a master and servant relationship, claims for retirement benefits, claims based on family or inheritance rights, claims for damages arising from a criminal or unlawful act, and other limited claims. Such claims could be revalorized by substitution of the forint for the pengo according to the intrinsic value of the pengo at the time when the claim arose. For claims for wages or other compensation for labor performed, and claims for retirement benefits, a table of conversion between pengos and forints was published by the Government, which shows the conversion rate for each day between March 1, 1945 and July 31, 1946.

Decree No. 13110/1948 (XII.24) *Korm.* specifies that claims for money deposits originating prior to August 1, 1946 cannot be enforced against public bodies. Under Law 1947: XX *tv.*, which became effective on December 4, 1947, all the shares of stock issued by banking institutions and held by Hungarian nationals or by companies located in Hungary, became property of the Hungarian state. Enterprises administered by the State were to be considered public bodies under Decree No. 13110/1948 (XII.24) *Korm.* As a consequence, claims for money deposits against nationalized banks originating prior to August 1, 1946 could not be enforced.

Claims for bank deposits in pengos are claims expressed in a completely destroyed currency. The destruction of the currency took place in 1945 and 1946, before the peace treaty was signed and before the banks were nationalized. No responsibility was attached in the peace treaty to the Government of Hungary for the fact that obligations in pengos became worthless.

Rumania.—Prior to World War II the official rate of exchange between the Rumanian leu and the United States dollar was approximately 141 lei for a dollar. After World War II the value of Rumanian currency was very unstable and in 1947 the leu collapsed to such a low level that officially about 500,000 lei were considered to be the equivalent of a dollar. On August 15, 1947

the new leu was established. Old currency was redeemed for new at the rate of 20,000 old to one new leu within the maximum amount set by the government for various occupational classes of people, the remainder being deposited with the National Bank. (I International Financial Statistics 154 (No. 3, March 1948).)

Law No. 285 of August 15, 1947 (Official Gazette No. 186 of August 15, 1947) provided that debts contracted prior to August 15, 1947 shall be paid in new leu at the established rate of 20,000 to one. No exception was made as to any kind of obligation, and it appears that the rate of 20,000 to one also applied to bank deposits in Rumania.

By Decree No. 197, published in Official Gazette No. 186 of August 13, 1948 and effective that date, the government ordered the dissolution of all banking enterprises and credit institutions in Rumania, with the exception of a few banking institutions. The Rumanian Government appointed liquidators of the banks who were to sell the assets of the banks and pay the obligations. The National Bank of Rumania was authorized to advance to the liquidators the necessary funds for payment of the obligations. Bank deposits were not confiscated or otherwise taken.

On January 27, 1952 a second devaluation took place. The leu was now tied to the Soviet ruble at the nominal value of 2.80 lei per ruble. On February 1, 1954 a currency reform aligned the leu with the ruble of the U.S.S.R. at the rate of 1.50 leu per ruble. This relation represents a value of 6 lei for a United States dollar. (The Statesman's Yearbook 1349 (ed. 1955).)

Bank deposits, mortgages.—In the *Chobady* claim the Commission noted that the nationalization of banks in Hungary did not affect the rights of depositors. Although they suffered loss when the money on deposit lost its value, the Commission held that the complete collapse of Hungarian currency in 1946 was the result of damage inflicted upon the Hungarian economy principally by the war and post-World War II conditions, and not of any action by the Government of Hungary giving rise to a compensable claim under Title III of the Act. The Commission further held that a prohibition against transfer of funds outside of a country is an exercise of sovereign authority which, though causing hardship to nonresidents having currency on deposit within the country, may not be deemed a "taking" of their property within the meaning of Section 303(2) of the Act. Claims based upon deposits in Bulgarian or Rumanian banks and expressed in Bulgarian leva or Rumanian leu were denied for the same reason. (*Claim of George Eranoff*, Claim No. BUL-1005, Dec. No. BUL-221, 10 FCSC Semiann. Rep. 17 (Jan.-June 1959); *Claim of Ilie Muresan*, Claim No. RUM-30211, Dec. No. RUM-314, 10 FCSC Semiann. Rep. 111 (Jan.-June 1959).) Similar reasons were given for the denial of a portion of a claim based upon Hungarian *korona* bank notes which were in claimant's possession but had become worthless. (*Claim of Irene Hill Mascotte*, Claim No. HUNG-20435, Dec. No. HUNG-20, 10 FCSC Semiann. Rep. 28 (Jan.-June 1959).)

A portion of another claim, based upon loss in connection with sums on deposit in blocked bank accounts in Hungary, was denied for the reasons stated in the *Chobady* claim. In its Final Decision,

the Commission added that "the blocking of all bank accounts is an exercise of sovereign authority which does not give rise to a compensable claim under Section 303 of the International Claims Settlement Act of 1949, as amended, against the nation in question, even though it precludes reinvestment and may result in a decline in the value of the accounts." (*Claim of IBM World Trade Corporation*, Claim No. HUNG-21107, Dec. No. HUNG-2030, 10 FCSC Semiann. Rep. 86 (Jan.-June 1959).)

A claim based upon a pengo mortgage acquired in 1935 on property in Hungary was denied, the Commission finding that when the pengo lost all value, entries in land records concerning pengo mortgages became meaningless. Although the Government of Hungary caused pengo mortgage entries to be cancelled in 1949, the Commission held that "such loss as the claimant may have sustained with respect to the mortgage in question was the result of drastic currency reform in Hungary, rather than the result of any of the actions for which the Government of Hungary is responsible under Section 303 of the Act. A currency reform resulting in devaluation of a nation's currency is an exercise of sovereign authority which does not give rise to cause of action against the nation in question." (*Claim of Elizabeth Endreny*, Claim No. HUNG-20783, Dec. No. HUNG-1626, 10 FCSC Semiann. Rep. 60 (Jan.-June 1959).)

The Commission also recognized the right of a sovereign to impose taxes on real property as a measure to provide revenue for governmental purposes, so long as such taxation does not discriminate against aliens. The portion of a claim based upon nondiscriminatory taxes collected on property prior to its nationalization was denied. (*Claim of Estate of Theresa Jeney, Deceased*, Claim No. HUNG-20006, Dec. No. HUNG-1094 (Amended), 10 FCSC Semiann. Rep. 58 (Jan.-June 1959).) Similarly, the loss of real property as a result of the foreclosure of tax liens was not deemed to be a "taking" within the meaning of Section 303(2) of the Act. (*Claim of Ladislav Edward Hudec*, Claim No. HUNG-22321, Dec. No. HUNG-1395, 10 FCSC Semiann. Rep. 54 (Jan.-June 1959).)

In the Matter of the Claim of

Claim No. RUM-30044
Decision No. RUM-4

ARTHUR ZENTLER

Against the Government of Rumania

Awards on bond claims under Section 303(3), Title III of the 1949 Act limited to amounts which, by the terms of the bond contracts, "became payable prior to September 15, 1947." Provisions in bond contracts accelerating principal amounts did not render such amounts "payable prior to September 15, 1947" unless invoked before that date. Mere default by Rumania in paying

interest on its bonded indebtedness was insufficient to accelerate principal amounts under bond contracts requiring, as condition precedent, written notice by at least 25% of the bondholders.

PROPOSED DECISION

This is a claim for twenty-two thousand six hundred dollars (\$22,600.00) under the provisions of Section 303(3) of the International Claims Settlement Act of 1949, as amended, against the Government of Rumania by ARTHUR ZENTLER, a citizen of the United States since his naturalization on January 24, 1898, for the failure of the said government to meet its contractual obligations.

The record shows that claimant purchased on March 7, 1929, and presently holds ten bonds of the denomination of one thousand dollars (\$1000.00) each of the issue known as Kingdom of Roumania Monopolies Institute 7% Guaranteed External Sinking Fund, Stabilization and Development Loan of 1929, due February 1, 1959, numbers M 18136 to M 18145 inclusive, under the terms of which the Government of Rumania, as a primary obligor, guaranteed payment to holders of the sum of thirty-five dollars (\$35.00) for each thousand dollars (\$1000.00) in principal amount held semiannually on February 1st and on August 1st of each year until the maturity date of the bond issue on February 1, 1959. It further appears that commencing with the payment which fell due on February 1, 1938, no payments on account of interest have been made to date by the Government of Rumania with respect to claimant's bonds. Thus, the Commission finds that from February 1, 1938 to September 15, 1947, the Government of Rumania failed to meet its obligations under claimant's bond contracts to make payments to him totalling seven thousand dollars (\$7000.00).

Section 303(3) of the Act authorizes the Commission to receive and determine, among other claims, those based on the failure of the Government of Rumania to—

meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States . . . prior to September 1, 1939, in the case of . . . Rumania, and which became payable prior to September 15, 1947.

Accordingly, the Commission has concluded that any award under the above provisions of the Act may include only unpaid amounts which by the terms of the bond contracts were payable prior to September 15, 1947, and may not include any amounts which became payable thereafter.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to ARTHUR ZENTLER, claimant herein, in the amount of seven thousand dollars (\$7000.00), plus interest thereon at the rate of 6% per annum from the respective due dates of the obligations represented by the above award to August 9, 1955, the effective date of Section 303.

Payment of the award herein shall not be construed to have divested claimant herein or the Government of the United States, on his behalf, of any rights against the Government of Rumania, for the unpaid balance of the claim, if any.

Dated at Washington, D.C.

January 16, 1957.

FINAL DECISION

The Commission issued its Proposed Decision on January 16, 1957, allowing this claim, based on the failure of the Government of Rumania to meet its obligations with respect to certain bonds held by claimant, and making an award in the amount of seven thousand dollars, plus interest. The said award was calculated on the basis of including therein only amounts representing past due coupons which by the terms of bond contracts were payable prior to September 15, 1947 in accordance with the limitation contained in Section 303(3) of the International Claims Settlement Act of 1949, as amended. Claimant has filed objections to the said Proposed Decision but requested no hearing.

In substance, claimant's objections to the Proposed Decision herein appear to be founded on a contention that there was an "accelerated maturity" of the principal of the obligations which form the basis of the claim and that hence, such principal amounts should be included as an item upon which to calculate his award.

In support of his contention, claimant cites the following provision of the bond agreement: ". . . in case of default as provided in the Loan Agreement the principal . . . of issue may be declared and become due and payable in the manner and with the effect provided in the Loan Agreement." He does not, however, cite the Loan Agreement in order to show the "manner" of accelerating principal, nor does he go to such agreement to determine the "effect" of such action. In addition, he does not, in his objections, state that principal has in fact been "declared" and has "become due and payable," as provided in the Loan Agreement. Rather, he relies on "wartime events" which "may have led to omission of what were superfluous formalities" to excuse the fact that the

acceleration provisions of the Loan Agreement were never invoked by the bondholders.

The acceleration provision contained in the Monopolies Institute Loan Agreement referred to by claimant provides that in the event of default by the Institute "then in such case, the holders of at least twenty-five per cent (25%) in principal amount of all Stabilization Bonds at the time outstanding may, by notice in writing signed by or on behalf of such holders and delivered to the respective Fiscal Agents, declare the entire principal amount of all the Stabilization Bonds at the time outstanding, due and payable. . . ." Claimant has submitted no evidence to establish that the acceleration provisions in question were ever invoked. Quite to the contrary, information available to the Commission clearly establishes that the provisions were never invoked.

It is of interest to note that there was little or nothing for bondholders of this issue to gain by declaring the principal obligations accelerated since the government of Rumania repeatedly, from 1934 on, pleaded and demonstrated its inability to meet the service on its external debt, let alone the greater amounts represented by the principal obligations thereof. Moreover, the act of declaring the principal of the obligations in question due and payable would have been a rather meaningless gesture toward increasing any remedies which United States national creditors may have had since there was no United States espousal of these simple debt claims and no judicial remedy with respect to the sovereign government of Rumania. Lastly, it is noted that the acceleration provision of the Loan Agreement underlying the issue in question was so drafted as to render it highly unlikely that it would be invoked because of the fact that concerted action by a large percentage of bondholders scattered all over the world was a very remote possibility where there was little or no incentive to take the required action. The conclusion which may be most reasonably drawn from the foregoing is that the vast majority of bondholders of the issue held by claimant felt that their interests would best be served after default in service on obligations held by them by accepting certain compromise payments which were offered rather than by declaring an acceleration of the principal of the debt.

The Commission finds that the provisions of the Loan Agreement regarding acceleration of maturity must be viewed as establishing conditions precedent to acceleration rather than "mere formalities." Moreover, claimant's attempt to justify failure to invoke these provisions on the ground that World War II made it difficult or impossible to take advantage of the provisions must be considered not in point since the bond issue in question has

been in default continuously since February 1934, which is well prior to Rumania's involvement in World War II.

Accordingly, general notice of the Proposed Decision having been given by posting for thirty days, it is ORDERED that such Proposed Decision be and the same is hereby entered as the Final Decision on this claim, the award being restated as follows:

Seven thousand dollars (\$7,000.00) plus interest thereon at the rate of 6% per annum from the respective due dates of the obligations represented by the above award to August 9, 1955, the effective date of Section 303, in the amount of five thousand three hundred sixty-three dollars (\$5,363.00).

DISSENTING OPINION:

I find that I am unable to agree in all respects with the findings and conclusions of my colleagues in this case. My particular difference with their conclusions is in the decision to limit claimant's recovery solely to the defaulted interest which accrued between February 1, 1938 and September 15, 1947 and which amounts to \$7,000.00 plus interest on the defaulted coupons to August 9, 1955 in the amount of \$5,363.00. This award by virtue of the narrow construction accorded Section 303(3), in my opinion, allows something short of that intended by the Congress in extending relief to American nationals under the Act.

There is no argument about the fact that the Government of Rumania defaulted in its obligations to pay interest on the bond issue in question, known as Kingdom of Rumania Monopolies Institute 7% Guaranteed External Sinking Fund, Stabilization and Development Loan 1929, due February 1, 1959. Nor is there any difference of opinion concerning the fact that the Government of Rumania defaulted in certain other contractual obligations under the bond agreement prior to September 1, 1939.

The contractual obligations or covenants which were breached by the obligor government under the bond agreement included failure to choose each year by lottery a certain number of bonds for accelerated payment, failure to contribute to the sinking fund provided for retirement of the issue at maturity, etc. While it is recognized that the bond holder was required under the terms of the agreement to exercise certain positive actions in order to accelerate such payment, it is apparent from the conduct and action of the obligor that prior to September 15, 1947 it exercised certain sovereign powers which altered or changed its covenants under the contract without recourse to the obligee by regulating the value of money or freedom of use of the monies which it agreed to pay. These restrictions were only a few of the many curtailments imposed on holders of securities. On July 11, 1940,

Decree Law No. 2343 ordered conversion of certain types of bearer shares of stock into registered shares and then froze such stock in the hands of the holders. A similar type of restriction was enacted by the law of April 1, 1941 (M.O. No. 78) in which all shares of state monopolies securities were nationalized and exchange limited to conversion restricted to lei. These laws and numerous other regulations obviously restricted use of private property without recourse. It is also evident that prior to and after the war, up to September 15, 1947, there were neither adequate nor proper legal remedies afforded an obligee to protect his interest. The fact that there were political and economic exigencies at the time, in my opinion, is no excuse.

The events which followed the signing of the peace treaty with Rumania on September 15, 1947 and the early flaunting of its obligations thereunder by this former enemy government is some indication of its lack of intention or desire to remedy the default in interest or other defaulted covenants in the bond agreement. In spite of statements to the contrary, all indications point to the fact that other than exercising the meaningless act of acknowledging the obligation to preserve its bargaining position, the Government of Rumania intends to do nothing more. Aside from this speculation and in view of the very limited respect that is granted individual's property rights in Rumania today, there is little likelihood that the remedies provided under the contract could be pursued with any success in this Communist-dominated country. There have occurred certain definite and undenied defaults under the bond agreement. Likewise, it is apparent that prior to the war, and more particularly since the war, there has been a denial of justice or, more specifically, there has been a failure by this particular foreign government to permit proper legal remedies or afford other means of relief which would normally accrue under generally accepted principles of law in any democratic form of government.

Without undue taxing of one's imagination, under the present regime in Rumania, there is little likelihood that the claimant would or could have a proper forum or judicial forum to provide him with a means of redress should he elect to exercise his rights to accelerate the bonds under the contract. In fact, under the present circumstances the resort to such remedy would clearly be futile and indeed might be fatal should the claimant undertake to obtain such relief under local law. Such action coupled with a default or defaults as has been indicated here is, in my opinion, a *de facto* repudiation. Under such conditions, a claim would arise under the international law. *II Hyde, International Law* §§ 281-85 (rev. ed. 1951).

It is reasonable to assume that where an injured national does not have a fair and impartial opportunity to resort to the legal remedies against the responsible foreign government and exhaust them, there is a denial of justice. *V Hackworth, Digest of International Law*, 611, 612 (1943). Until recently the claimant was required to show that he had exhausted his local remedy. The strict compliance with this requirement has been relaxed. The first official departure from the generally accepted rule was occasioned in 1923 in the Mixed Claims Convention with Mexico in which it was provided that no claim should be rejected for failure to exhaust local remedies. *Claims Convention with Mexico, September 8, 1923*, 43 Stat. 1730, TS No. 678.

I cannot bring myself to believe, in light of the Government of Rumania's complete disregard of private rights by its numerous expropriations, nationalizations and confiscatory acts since September 15, 1947, that it has any real or serious intention to honor its contractual or other obligations set forth in this bond issue agreement of 1929. It would seem naive to continue to honor this contract in light of present conditions in Rumania trusting that on the maturity date, February 1, 1959, the default which has continued from 1934 to date will ripen into full and complete satisfaction of all obligations which will then have accrued. It would not seem unreasonable to expect that the events of the past set a clear picture or pattern of what may be anticipated for the future.

The flagrant injustices that exist today in Rumania, evaluated on our concept of justice and equity, clearly indicate that the claimant here has been denied a proper forum within which to remedy the defaults that have taken place.

One good fact is worth a shipload of argument. We may argue that Rumania may honor its obligations on February 1, 1959. The facts as we know them bespeak strongly against such a probability. Should the unexpected come to pass on that date, the Commission could still undertake to adjust equities to obviate a double payment to the bondholder. Until such a condition exists, I believe the claimant is entitled to the benefit of doubt. I would find here that the bonds in question have in fact been repudiated and that they are now due in the face amount with accrued interest to September 15, 1947. To hold to the contrary is wishful thinking and according the claimant something less than he is entitled.

Dated at Washington, D.C.
April 10, 1957.

Dollar bonds of the Governments of Bulgaria, Hungary, and Rumania.—Section 303(3) of the 1949 Act authorized the Commission to receive and determine claims based upon certain obligations which, among other things, became payable prior to September 15, 1947. Accordingly, in the instant case, only the interest which became due prior to September 15, 1947 on bonds known as Kingdom of Rumania Monopolies Institute 7% Loan of 1929, due on February 1, 1959, was found to be within the purview of Section 303(3) of the Act and compensable, and the portion of the claim based upon the principal amount of the bonds and the interest which became due after September 15, 1947, was denied, one of the Commissioners dissenting. The same reasoning was applied with respect to bonds of the Government of Bulgaria (*Claim of Elizabeth R. Tollner*, Claim No. BUL-1036, Dec. No. BUL-1) and of the Government of Hungary, even in cases where the original maturity date of February 1, 1944 of bonds of the 7½% Hungarian State Loan of 1924 was postponed, according to a legend superimposed on the bonds, to August 1, 1979, and portions of claims based upon the principal amount and interest coupons due after September 15, 1947 were denied. (*Claim of Howard P. Stemple*, Claim No. HUNG-20000, Dec. No. HUNG-4, 10 FCSC Semiann. Rep. 29 (Jan.-June 1959).) Interest coupons of public bonds were held to be separate and distinct contracts for the payment of money when due, and not merely incidents of the principal debt to which they were attached. This position was taken in connection with a claim based upon interest coupons of a bond of the 7% Kingdom of Bulgaria Settlement Loan of 1926, where the bond itself had been disposed of by the claimant. (*Claim of Joseph E. Rosatti*, Claim No. BUL-1066, Dec. No. BUL-196.)

Limitations on awards.—Section 307 of the 1949 Act limited any award to the “actual consideration last paid” for the claim “either prior to January 1, 1953, or between that date and the filing of the claim, whichever is less.” The purpose of this provision was to prevent the enrichment of speculators who bought bonds and other claims at low prices. (H.R. Rep. No. 624, 84th Cong., 1st Sess. 15 (1955).) Where a claimant had purchased the eight bonds of the 7% Kingdom of Bulgaria Settlement Loan of 1926 and ten bonds of the 7½% Kingdom of Bulgaria Stabilization Loan of 1928, each in the face amount of \$1,000.00, for a total of \$540.00 on June 29, 1946, the award was limited to such latter amount. (*Claim of Benjamin Blumberg*, Claim No. BUL-1126, Dec. No. BUL-98, 10 FCSC Semiann. Rep. 14-15 (Jan.-June 1959).)

An interesting issue arose when a claimant based a portion of her claim upon five certificates, each evidencing the payment of \$5.00 toward the purchase of a Kingdom of Rumania 4% Consolidation Loan of 1922 bond, which would have been issued upon the presentation of such certificates in the total amount of \$500.00, such amount being the face amount of the bond. The Commission held that such certificates were obviously not bonds and did not bind the Government of Rumania under any contract until a number sufficient for the issuance of a \$500.00 bond had been acquired and presented, and denied this portion of the claim.

(*Claim of Edith Rosalind Marks*, Claim No. RUM-30308, Dec. No. RUM-299, 10 FCSC Semiann. Rep. 110-111 (Jan.-June 1959).)

Currency of the United States.—In order to form the basis of a valid claim under Section 303(3) of the 1949 Act, obligations must have been “expressed in currency of the United States. . . .” Some bonds of the Governments of Bulgaria, Hungary and Rumania were issued in currency other than that of the United States, but with an option under which the holder of the bond could demand payment in such foreign currency or in currency of the United States. In such cases the Commission considered that the option was with the holder of the bond and not with the obligor government to make the bond payable in dollars of the United States of America. The Commission held that the term, “obligations expressed in currency of the United States,” as used in Section 303(3) of the Act, includes obligations expressed in alternative currencies, provided one of them is United States currency. Accordingly, pound sterling bonds of the issue known as Kingdom of Rumania 4% Consolidation Loan of 1922, payable in pounds sterling or United States dollars, were held to be within the purview of Section 303(3) of the Act and compensation was granted. (*Claim of Adrian Clyde Fisher*, Claim No. RUM-30031, Dec. No. RUM-16, 10 FCSC Semiann. Rep. 94-95 (Jan.-June 1959).)

A related issue arose in connection with 7% Kingdom of Rumania Monopolies Institute bonds having a superimposed legend by which the medium of payment was changed from currency of the United States to Austrian schillings pursuant to an “Accord” entered into in 1937. The Commission held that such bonds fell into default under the terms of the “Accord,” by failure of payment of interest due in July 1939 and thereafter. Moreover, this default constituted a failure of satisfaction which relegated the parties to their original agreement, under which payment of these bonds, and interest thereon, was to be in United States currency, and award was granted accordingly. (*Claim of Laura Raul*, Claim No. RUM-30592, Dec. No. RUM-352 (Final Decision).)

Claims based upon obligations which were not expressed in currency of the United States were found not compensable under Title III of the Act. Accordingly, claims based upon bonds of the Government of Hungary of the 6% issue of 1929, expressed and payable in Swiss francs, and 6% Series B bonds of 100 *korona* denomination, issued November 1, 1914 and payable in Austro-Hungarian currency, were denied. (*Claim of Fred A. Weiss*, Claim No. HUNG-21186, Dec. No. HUNG-29, 10 FCSC Semiann. Rep. 34 (Jan.-June 1959); and *Claim of Vincent I. Varga*, Claim No. HUNG-20264, Dec. No. HUNG-1, 10 FCSC Semiann. Rep. 27 (Jan.-June 1959).)

Other contractual rights.—The term “obligations . . . arising out of contractual or other rights,” as used in Section 303(3) of the Act, was not limited to bonds of the Governments of Bulgaria, Hungary and Rumania, but also included other types of government obligations. An indebtedness of the Government of Rumania under a contractual agreement, in United States dollars, was held to be within the purview of Section 303(3) of the Act. (*Claim of Evelina Ball Perkins, et al.*, Claim No. RUM-30192, Dec. No.

RUM-264, 10 FCSC Semiann. Rep. 106-107 (Jan.-June 1959).) The same conclusion was reached in a claim based upon expenses incurred in the course of representing Rumanian citizens in the United States pursuant to the request of the Government of Rumania. (*Claim of Alic J. Lupear*, Claim No. RUM-30476, Dec. No. RUM-794 (Final Decision), 10 FCSC Semiann. Rep. 121, 124 (Jan.-June 1959).)

Interest on awards in bond claims.—For a discussion of the payment of interest on awards, in general, see the annotations to *Claim of George H. Earle III and United States of America*, appearing on page 190. It will be noted from the statement of the award in the *Zentler* claim that interest on bond claims, where the principal amount of the award comprises unpaid interest coupons maturing on various dates, is to be computed from the respective due dates of the obligations represented by the award.

In the Matter of the Claim of

Claim No. HUNG-22020
Decision No. HUNG-1605

**EUROPEAN MORTGAGE SERIES B
CORPORATION**

Against the Government of Hungary

Debt claim against Hungary denied under Section 303(3), Title III of the 1949 Act because it was an obligation of Hungarian enterprises and not one of the Government of Hungary "prior to September 1, 1939," if at all. Section 303(3) provides compensation for a limited class of claims having origin in contract; such claims, if not meeting requirements of Section 303(3) for compensability, are not to be considered under Section 303(1) or (2).

FINAL DECISION

This is a claim by EUROPEAN MORTGAGE SERIES B CORPORATION against the Government of Hungary under Section 303 of the International Claims Settlement Act of 1949, as amended, for \$2,151,807.19, based upon certain contractual obligations expressed in certificates known as pfandbriefe, issued by the Hungarian Banks Cooperative Society for the Issuing of Mortgage Bonds, secured by first mortgages on real property in Hungary in favor of the Cooperative Society, and guaranteed by the Cooperative Society and several Hungarian banks which were the Society's members.

The pfandbriefe were issued originally to European Mortgage and Investment Corporation, which pledged them as security for

its own issue of Series B bonds. As a result of a 1935 reorganization of European Mortgage and Investment Corporation, the claimant corporation was organized as its successor in certain respects, taking over the collateral for the Series B bonds and issuing its own income bonds to Series B bondholders.

Claimant alleges loss as a result of: (1) actions of the Hungarian Government reducing, suspending, and terminating payments of interest and principal on the pfandbriefe and the underlying mortgages; (2) nationalization of the guaranteeing banks and the mortgages, and consequent assumption of the obligations by the Hungarian Government; (3) seizure of the mortgaged properties; (4) other decrees having adverse effect on claimant's interest in pledged properties; and (5) war damage to pledged properties.

Section 303 of the Act provides, *inter alia*, for the receipt and determination of claims of nationals of the United States against the Government of Hungary, for its failure: (1) to restore or pay compensation for property of nationals of the United States as required by articles 26 and 27 of the treaty of peace with Hungary; (2) to pay effective compensation for the nationalization or other taking of property of nationals of the United States in Hungary; and (3) to meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to September 1, 1939, and becoming payable prior to September 15, 1947.

In a Proposed Decision issued on November 10, 1958, the claim was found to be not compensable under Section 303 of the Act for the reasons that: (1) it had not been established that the claimant had suffered a loss for which the Government of Hungary was required to make restoration or pay compensation under the referenced articles of the treaty of peace; (2) as a debt claim arising out of contract, this claim is one which the Congress intended be entertained only under Section 303(3) and not under Section 303(2) of the Act; and (3) the obligation was not one of the Government of Hungary on September 1, 1939, as required for compensation under Section 303(3).

Claimant filed objections to the Proposed Decision, and the matter was heard on January 21, 1959, together with other claims of a similar nature, in which objections to Proposed Decisions were filed. Having carefully considered all briefs and oral arguments presented to it, the Commission finds its position in the matter unaltered.

The requirements of Section 303(1) and Section 303(3) for compensation thereunder remain unsatisfied. The principal argument, however, of those opposing the Proposed Decisions was for

entitlement to compensation under Section 303(2) of the Act, on the theory that the nationalization of a debtor is a taking of the property of the creditor; or, at least, that this is so when the nationalization involves a taking of property of the debtor which was pledged as security for the debt. However, the Commission remains of the opinion stated in the Proposed Decision, that the enactment of Section 303(3) manifests the intention of Congress to compensate for a limited class of claims having their origin in contract, that such claims are compensable under that Section or nowhere in the Act, and that where such a claim fails under Section 303(3), the carefully worded limitations of that Section are not to be nullified by entertainment of the claim under other, less restrictive, provisions of the statute. Moreover, consideration of the claim under (1) or (2) of Section 303, notwithstanding this Congressional intention, would not achieve the result desired by claimant, as will be seen.

Title III of the International Claims Settlement Act of 1949, as amended, under which the instant claim is filed, defines "property":

Sec. 301(9) "Property" means any property, right, or interest.

The title then goes on to provide at section 303(1), (2) and (3), at section 304 and at section 305(a)(1) and (2) for six categories of claims which, among others, may arise from injuries to or losses of American property. The word "property" appears in three of them.

The question of compensability under (2) of section 303 requires a determination of the meaning of the immediately pertinent language in the light of its relationship to other language of the section, and in the light of the legislative history and background.

The immediately pertinent part of the language is as follows:

Sec. 303. The Commission shall—determine in accordance with applicable substantive law, including international law, the validity—of claims of nationals of the United States against the Government of—Hungary arising out of the failure to—

- (2) pay effective compensation for the nationalization, compulsory liquidation or other taking—of property of nationals of the United States in—Hungary—.

This is not equivalent to saying that every interference with American property shall be the subject of compensation. The property must have been in Hungary and the claim must be one which is valid when determined in accordance with applicable substantive law, including international law.

There are a number of indications that the Congress did not intend an extension of the coverages of section 303 beyond its clear import.

One of them is the special reference to the words "international law" to be found at page 13 of the Report of the Committee on Foreign Affairs (House Report No. 624, 84th Congress, 1st Session). It is there stated:

Significance of phrase "including international law"—
In connection with all categories of claims (referred to in secs. 303, 304 and 305), the Commission is authorized and directed to determine the claims "in accordance with applicable substantive law, including international law." The inclusion of "international law" would permit the application of several principles of law which might not otherwise be available to the Commission.

Thereafter follow two examples, both of them exclusionary.

Another indication of this intention on the part of Congress is found in expressions of awareness of the very limited amount of the funds available for payment of claims. That Congress was acutely cognizant of the meagerness of the funds is clearly pointed out in the Committee reports. The fact is referred to no less than six times in the House Report (*supra*) and three times in the Senate Report (Report No. 1050, Committee on Foreign Relations, 84th Congress, 1st Session). In a number of instances the reports give this as a reason against extending the legislative coverage of claims.

For example, in opposition to one specific proposal to extend the coverages the Senate Committee Report (page 10) states:

To include the non-national in origin group would only dilute the funds still further, and increase the injustice to American owners.

Again in the "Conclusions" (page 12) the report states:

Admittedly, the bill, as it is reported to the Senate, does not embrace all categories of claimants who may feel that they should be allowed to participate in the funds. It must be emphasized, however, that these funds are limited, and that to the extent that additional, less deserving classes are admitted, those funds will be further diluted, to the prejudice of individuals who were American citizens at the time they were injured in their property rights. The Committee's primary concern has been to do the greatest possible equity while at the same time following a course which is believed to be in the best interests of the United States in maintaining a sound claims policy.

Developments to date have borne out Congressional expectation regarding the inadequacy of the funds. It now appears that in

the Hungarian program, little, if any, more than the initial payments provided by statute will be possible. The situation with regard to the Rumanian claims is but a little better; and even in the case of Bulgaria only fractional final payments will be possible.

The Treaty of Peace with Hungary became effective September 15, 1947. The treaty provided for the payment of war damage claims by Hungary. Her failure to make payment brought about the vesting of her assets in the United States and application of the proceeds to the war damage claims (303(1)) plus those others designated in this statute. The Fund in this instance would be inadequate for the payment of the war damage claims and it is further diminished by the participation of every added class.

At page 3 of the House Committee Report the following appears:

The treaty of peace with each of the three countries provides that the United States can seize and liquidate property in the United States belonging to such country or its nationals and apply the proceeds for "such purposes as it may desire, within the limits of its claims and those of its nationals * * *" against such country.

The peace treaties specifically require that war claims are to be taken care of by each of the three former enemy countries. None of the three countries has complied with its treaty agreement in this respect. In addition, each has seized property of United States nationals and has made no compensation. Consequently, the bill provides for the liquidation of the blocked assets to be vested and those already vested under the Trading With the Enemy Act, and the distribution of the proceeds among United States nationals having *prewar contract claims, war damage claims, and nationalization or other expropriation claims* * * * *. (Emphasis supplied).

This legislative history and background indicates a conservative approach in the effort to understand the meaning of the statutory language employed by the Congress and warns against any hurried recognition of claims in categories clouded by ambiguities or uncertainties.

The actual intent of the Congress in this matter becomes clearly apparent from a consideration of the language of and reasons for the presence in the statute of 303(3). This language immediately follows in the same sentence the above-quoted portions of section 303. It, together with the portions of the opening phrases of the section necessary to understanding, is as follows:

The Commission shall determine in accordance with applicable substantive law, including international law, the validity and amount of claims of nationals of the United States against the Government of—Hungary—arising out of the failure to—

(1)—

(2)—

(3)—meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to—September 1, 1939, in the case of Hungary—and which became payable prior to September 15, 1947.

Claims in the category to which the instant claim belongs are primarily creditor claims. Likewise a claim against the Government of Hungary based on failure to meet obligations expressed in currency of the United States, and arising out of contractual or other rights acquired by a national of the United States prior to September 1, 1939 and payable prior to September 15, 1947, is a creditor claim. Nevertheless, it is obvious that if creditor claims are to be entertained under 303(2) then 303(3) has no purpose in the statute, for the claimant eligible under 303(3) could have his claim allowed in full if he filed under section 303(2) and free of the limitations of 303(3) to amounts payable prior to September 15, 1947.

In the interpretation of the law in this respect, there must be borne in mind a maxim of statutory construction which has been expressed as follows:

The presumption is that the lawmaker has a definite purpose in every enactment and has adopted and formulated the subsidiary provisions in harmony with that purpose; that these are needful to accomplish it; and that, if that is the intended effect, they will, at least, conduce to effectuate it. That purpose is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms. . . . Thus Chancellor Kent observed: "In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from the context; from the occasion and necessity of the law; from the mischief felt and the remedy in view; and the intention should be taken or presumed according to what is consistent with reason and good discretion."¹

Should the presence of (3) in 303 be interpreted as excluding only the class of creditor claims there defined from a coverage which otherwise would be enjoyed under 303(2), we reach a result which is equally startling for it would mean that claims of creditors of the offending government itself, although recognized, would nevertheless be recognized only in a limited status inferior to that of creditors of its mere nationals.

The only conclusion completely consistent with the legislative history and background and with the presence in the statute of

¹ 2 Sutherland, *Statutory Construction* 338 (3rd ed., Horack, 1943).

(3) of section 303 is one which leads to a denial of the claim, i.e., that claims presenting such a set of facts as this are not, without more, to be found compensable under (2) of section 303.

The question remains as to whether such a result is consistent with the language of (2) of section 303.

It has been pointed out above that the claim must be one which is valid when determined in accordance with applicable international law. That is a requirement of section 303. It has also been pointed out that special emphasis was given to this provision in the Senate Committee Report.

It has not been demonstrated to the Commission, and the Commission's own research has not established, that international law requires a payment of compensation to a creditor when the debtor or the debtor's property has been nationalized or otherwise taken. Quite to the contrary, the weight of authority is to the effect that such losses as a creditor may suffer as a result of a wrongful act committed against his debtor are too remote or indirect to sustain an award to the creditor.

Hackworth, in discussing claims such as the foregoing, states as follows:

The British-Mexican Claims Commission disallowed a claim of bondholders of a corporation which held a mortgage on Mexican property damaged by acts of insurgents. The Commission said:

... It was not explained just how the debenture holders had suffered that damage; but assuming that this fact had been proved, such damage would be too indirect for the Commission to venture to hold Mexico responsible for it. Independently of this consideration, the Commission agrees with Ralston, *The Law and Procedure of International Tribunals*, paragraph 287:—

Creditors and Mortgagees as Parties.—The question as to whether creditors of a person suffering injury have a right to claim before a commission, came several times before the Spanish-American Commission, and it was repeatedly decided that they had no footing because of wrongs committed toward their debtor. This was the holding in the *Mora and Arango*, *Benner and Rodriguez* cases, it also being the holding in the last case that "the embargo of an estate which was mortgaged to the claimant, but of which he had neither the legal title nor possession, afforded no ground for a claim of damages."

And with Borchard, *Diplomatic Protection of Citizens Abroad*, p. 645, paragraph 297:—

... Mortgagees are secured creditors in a special sense. A mortgage is in form a conveyance vesting in the mortgagee upon its execution a conditional estate, which becomes absolute upon breach of the condition. The Department of State in the exercise of its discretion has on several occasions exercised good offices on behalf of the equitable interest of American mortgagees of foreign-owned property. This has been particularly true of American bondholder-mortgagees of foreign railroads.

International Commissions by weight of authority have shown a disinclination to allow American mortgagees to appear as claimants for damages arising out of injuries to the property of their debtor mortgagors. This conclusion may be defended on the ground that the mortgagee is too indirectly affected by such injuries to authorize his appearance as a claimant.²

Similarly, the majority of the General Claims Commission, United States and Mexico, in disallowing the claim of a United States national for nonpayment for equipment furnished to a Mexican railroad corporation which had been taken over and operated by the Mexican Government, concluded:

- I. A State does not incur international responsibility from the fact that a subject of the claimant State suffers damage as a corollary or result of an injury which the defendant State has inflicted upon one of its own nationals or upon an individual of a nationality other than that of the claimant country, with whom the claimant is united by ties of relationship.
- II. A State does not incur international responsibility from the fact that an individual or company of the nationality of another State suffers a pecuniary injury as the corollary or result of an injury which the defendant State has inflicted upon an individual or company irrespective of nationality when the relations between the former and the latter are of a contractual nature.³

The application of the rule of proximate cause to claims of this nature was discussed by The Mixed Claims Commission (United States and Germany), established under the agreement of August 10, 1922, in its Administrative Decision II. They concluded that "The simple test to be applied in all cases is: has an Ameri-

² V. Hackworth, *Digest of International Law* 848. Mention in this quotation of the Rodriguez case has reference to the claim of *Anna M. Rodriguez, Executrix of the Estate of Mateo C. Rodriguez*, which was presented by the United States to the Spanish-United States Claims Commission, established in accordance with the agreement of February 11-12, 1871. Claimant there, a United States national, held a mortgage on an estate in Cuba which was seized and burned wrongfully by Spanish authorities. The claim was disallowed, as indicated.

³ V. Hackworth, *Digest of International Law* 808.

can national proven a loss suffered by him, susceptible of being measured with reasonable exactness by pecuniary standards, and is that loss attributable to Germany's act as a proximate cause?" A claimant's burden of establishing that he would not have suffered loss had it not been for the wrongful act complained of was made clear in the Commission's order of May 7, 1925, which included among rules applicable to debts, bank deposits, and bonds, the following:

15. Whether an exceptional war measure was the proximate cause of the damage will depend on the facts in each particular case. In considering these facts, the following principles will be observed:

(a)

(b) The exceptional war measure will be established as the proximate cause of the damage sustained on account of the depreciation in the value of such bonds that may be proven by the evidence in any particular case, if it appears that from all the facts and circumstances in such case the reasonable inference to be drawn therefrom is that the claimant would have withdrawn his bonds from Germany for the purpose of sale or exchange, had he not been prevented from doing so by such exceptional war measures.⁴

Application of a similar rule to the instant case places upon the claimant a burden of establishing, if compensation is to be had under Section 303(2) of the Act, that the debt forming the basis of its claim would have been paid, *but for* the actions of the Government of Hungary of which it complains. This has not been established and does not appear susceptible of establishment in view of the events commencing in 1931 which adversely affected claimant's rights.

Also for consideration herein is the 1945 Annual Report of the Foreign Bondholders Protective Council, which, at page 6, quotes from the October 20, 1933 White House announcement concerning the organization of the Council, as follows:

The White House announcement to the press on October 20, 1933, stated that the making of satisfactory arrangements and protecting American interests was "a task primarily for private initiative and interests. The traditional policy of the American Government has been that such loan and investment transactions were primarily private actions, to be handled by the parties directly concerned. The Government realizes a duty, within the proper limits of international law and international amity, to defend American interests abroad. However, it would not be wise for the Government to

⁴ *Id.* at 498-499.

undertake directly the settlement of private debt situations."

This language is quoted with approval in the Senate Committee Report, *supra*, at the bottom of page 11.

It is also to be noted that (2) of section 303 requires that the property which is the subject of the claim have been in Hungary. Credits, bonds, notes, mortgages and the like are intangible property which for many purposes is given the situs, not of the debtor or of any property encumbered to secure the debt, but more commonly that of the owner. (See 15 C.J.S. 928, 84 C.J.S. 656, and cases thereat cited.)

It is clear that no American who has a claim against Hungary, Rumania, or Bulgaria, has an effective remedy against those countries and it is equally clear that Section 303 does not purport to include all types of claims which claimants might reasonably expect to be chargeable against those countries.

Accordingly, it is not a sufficient basis for an award under Section 303 for the Commission to find merely that the claimant appears to have no remedy elsewhere. What the Congress, mindful of the impracticability of any but limited coverages, appears to have undertaken to do here is to set up a classification, each section of which is self-contained and exclusive. Again and again in the Committee reports and earlier history of the legislation, the three types of claims included in the three divisions of section 303 are described as war damage claims, postwar nationalization claims, and prewar governmental debt claims. There is no reason to suppose that any overlapping or blurring of distinctions was anticipated. Debt claims not in the prewar governmental category are nowhere mentioned, and there can be little reason to believe that they could have been expected to crop up in the guise of war damage or postwar nationalization claims free of the severe limitations imposed by (3) of section 303.

There is still another statutory provision which is inconsistent with any Congressional purpose to throw open the gate for creditor claims under (2) of section 303. Section 208 of Title II specifically authorizes recovery on a limited class of creditor claims, being claims against those debtors whose property has come under the jurisdiction of the Office of Alien Property. If such claims were also to be considered under (2) of section 303 it would give rise to the possibility of double benefits, a result which Congress could scarcely have intended.

The Commission has carefully considered the contentions of the claimant that its mortgage bonds qualify under the provisions of (1) of 303. The pertinent parts of the opening language of 303 and of (1) are as follows:

The Commission shall determine in accordance with applicable substantive law, including international law, the validity—of claims of nationals of the United States against the Government of Hungary—arising out of the failure to—(1) restore or pay compensation for property of nationals of the United States as required by—articles 26 and 27 of the treaty of peace with Hungary—.

The claimant relies on the following language of article 26:

1. Insofar as Hungary has not already done so, Hungary shall restore all legal rights and interests in Hungary of the United Nations and their nationals as they existed on September 1, 1939, and shall return all property in Hungary of the United Nations and their nationals as it now exists.

It is obvious that if claimant's contention be regarded as valid on this point it would apply with equal force in the case of defaulted obligations of the Government of Hungary and reach a result which Congress could scarcely have contemplated. Otherwise it would not have added (3) of 303. The language of (1) of 303 is not to be interpreted as so far reaching.

In any event, a plea for restoration under article 26 of the treaty of claimant's legal rights as they existed on September 1, 1939, is without substance, since there has been no showing of a diminution of such rights since that date. Moreover, while articles 26 and 27 of the treaty of peace are referenced in (1) of Section 303, article 31 of the treaty is not so referenced, and provides:

1. The existence of the state of war shall not, in itself, be regarded as affecting the obligation to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the existence of the state of war, which became payable prior to the coming into force of the present treaty [September 15, 1947], and which are due by the Government or nationals of Hungary to the Government or nationals of one of the Allied and Associated Powers or are due by the Government or nationals of one of the Allied and Associated Powers to the Government or nationals of Hungary.

Failure to reference the above-quoted article in (1) of Section 303 can only indicate Congressional intention to include creditor claims not within that provision of the statute, but only within Section 303(3), which uses similar provisions to delineate the type of claim envisioned.

As to (3) of Section 303, nothing has been brought to the attention of the Commission to effect any modification of its consistent holding that compensation thereunder in a claim against Hungary depends, among other things, upon the obligation having been one of the Government of Hungary on September 1, 1939

and continuously thereafter. In the instant case, the obligation was not one of the Government of Hungary on that date, if, indeed, it ever became so.

The Commission is of the opinion that the instant claim must be denied. It is not intended to find that a creditor claimant could under no circumstances show himself entitled to recover, particularly under a statute with different background, history and language,¹ or that this particular claimant does not have a legitimate claim against the Government of Hungary. All that is found is that on such a set of facts as that presented here a claim does not come within the coverage of Section 303.

The Proposed Decision herein is affirmed and the claim denied.

Dated at Washington, D.C.

April 13, 1959.

DISSENTING OPINION:

I cannot agree with the majority decision of the Commission which would deny a claim based on a secured creditor interest in a property nationalized by the Government of Hungary.

I find nothing either in the Act or in the Congressional mandate to this Commission which permits a distinction between the holder of title to and the holder of a mortgage on realty nationalized by the Government of Hungary. Both suffered measurable loss through nationalization of their property without compensation, and it is difficult to imagine that it was the intent of Congress to provide for compensation in the one instance while not providing for it in the other. My reading of the legislative history of the statute authorizing the receipt and determination of claims against the Governments of Bulgaria, Hungary and Rumania discloses nothing which indicates that mortgagee interests do not fall within the ambit of subsection (2) of Section 303 of the Act.

It is an anachronism, in my opinion, to deny the instant claim on the basis of so-called traditional reluctance of international tribunals to look with favor upon claims based on secured creditor interests. Such decisions have always been founded on the theory that any losses sustained by the creditor were too remote, or indirect, and were not the proximate result of the wrongful act forming the basis of the claim. There is nothing remote or indirect, in my opinion, about the loss sustained by a mortgagee when the property securing his mortgage was nationalized under conditions which have prevailed in Hungary since

¹ For example, in Decision No. 1130, *In the Matter of the Claim of Emma Brunner*, Docket No. 1281, this Commission found claims of mortgage holders compensable because "the mortgagee has a right and interest in and with respect to property as that term is employed in the agreement of July 19, 1948," claims under Title I of the Act being determined in accordance with the Yugoslav Claims Agreement of 1948.

1946. Moreover, the total lack of due process in the nationalization program of the present government of Hungary demands, it seems to me, that the precedents cited by the majority of the Commission be distinguished from the situation herein, for the decisions cited were rendered in an atmosphere which assumed the existence of all of the rights and remedies which nations have customarily afforded.

The need for International Law to keep abreast by constant examination of its assumptions was well expressed by Frederick Sherwood Dunn in "The Protection of Nationals," as follows:

... By bringing its basic assumptions into the light and testing out alternative possibilities, our physical science has freed itself from the prepossessions remaining from a narrower world of experience and has made remarkable strides forward within the space of a few years.

It seems that our body of knowledge about international law and relations has now reached a similar stage in its development, where its underlying assumptions and the methods of inquiry used are no longer adequate to their task. Since the present ways of thinking about the subject became established, the range of our experience has widened in a spectacular manner and our knowledge of the world in which our international institutions operate has greatly increased. The practical problems we now face are radically different from those which forged the original postulates of our systematic thinking on the subject.¹

Similarly, in domestic law, Judge Lehman used these words with reference to the tangled problems which survived the Russian revolution. "There can be no true precedent in the books, when the facts are unprecedented." *Russian Reinsurance Co. v. Stoddard*, 240 N.Y. 149, 147 N.E. 703, 707 (1925). He called attention to the need of limiting the force of juridical conceptions at the boundary of common sense and justice.

Lastly, I find the position of the majority of the Commission difficult to reconcile with the position taken by its predecessor Commission under Title I of the Act where claims by holders of mortgages on properties nationalized by Yugoslavia were held to be compensable despite the fact that that Commission held "that creditors' interests were not settled or discharged by the Yugoslav Claims Agreement of 1948."² I have looked into the question of whether or not the law of Hungary may be relied on to distinguish the position of the majority of the Commission herein from the position taken under Title I and find it to be identical with that of Yugoslavia with respect to the character of the interest created by a mortgage against realty.

¹ At page 7.

² *Claim of Joseph Menton, et al.*, Docket No. 435, Dec. No. Y-89.

For the foregoing reasons, I dissent from the opinion of the majority of the Commission herein.

Dated at Washington, D.C.

April 13, 1959.

Creditor claims against Bulgaria, Hungary, and Rumania distinguished from nationalization claims.—Claims of unsecured creditors were denied by the Commission under the Yugoslav Claims Agreement of 1948, except for claims made for loss of bank deposits which were confiscated or otherwise “taken” by the Government of Yugoslavia. These were found to be within the purview of the Agreement and compensable under its terms. (See the *Claim of Anton Tabar, et al.* and annotations appearing on page 130.) On the other hand, creditors whose loans were secured by property which was nationalized or otherwise taken by the Government of Yugoslavia, were found by the Commission to have rights “in and with respect to property” within the purview of the Yugoslav Claims Agreement of 1948. (See the *Claim of Manfred Sternberg* and annotations appearing on page 62.)

In claims against Bulgaria, Hungary, and Rumania under Title III of the International Claims Settlement Act of 1949, as amended, the wording of the Act compelled the Commission to take the position that Congress intended debt claims arising out of contract to be entertained only under Subsection (3) of Section 303 of the Act and not under Subsection (1) or (2) of that Section. In the language of the Commission as used in the instant case: “The enactment of Section 303(3) manifests the intention of Congress to compensate for a limited class of claims having their origin in contract, that such claims are compensable under that Section are not to be nullified by entertainment of the claim fails under Section 303(3), the carefully worded limitations of that Section are not to be nullified by entertainment of the claim under other, less restrictive, provisions of the statute.” Limiting the purview of Section 303 of the Act with respect to creditor claims to those which were specified in Section 303(3), namely to government obligations (principally bonds) expressed in United States dollars, necessarily resulted in the denial of claims based upon loans due from others than the three governments, even if the security ensuring repayment was “taken” by Bulgaria, Hungary, or Rumania.

The Commission made it clear that Section 303 of the Act does not purport to compensate United States nationals for every kind of loss or damage suffered by them as a result of action by the Government of Bulgaria, Hungary, or Rumania. It held that it is not sufficient to establish the fact of loss due to an act or failure to act by a government, in order to bring a claim within the purview of the Act. To the contrary, the facts of a claim must fall within the specific language of one of the subsections of Section 303, in order to make it compensable.

Several claimants argued that a debt can be nationalized or taken and in such case would come within the purview of Section 303(2) of the Act, providing for compensation for property lost due to nationalization or other taking by Bulgaria, Hungary, or Rumania. In meeting such contention, the Commission held that it can hardly be said that there is an obligation to *pay compensation* for the alleged "taking" of claimant's debt. Rather, a case might be made for the imposition of a duty on the Government of Rumania, both on a legal and a moral plane, to *pay the debts*, clearly a duty which differs from the alleged obligation to *pay compensation* for the "taking" of debts. (*Claim of Universal Oil Products Company*, Claim No. RUM-30531, Dec. No. RUM-547, 10 FCSC Semiann. Rep. 117 (Jan.-June 1959).)

In sum, claims based upon a creditor's interest were denied unless the debtor was the Government of Bulgaria, Hungary, or Rumania, the debt was expressed in United States dollars, and the other conditions for compensability of the claim under Section 303(3) were present. (See *Claim of Arthur Zentler*, appearing at page 245.)

Bonds and debts of municipalities.—A claim based upon bonds issued by the Capital City of Budapest, known as 7½% Hungarian Consolidated Municipal Loan of July 1, 1925, 7% Hungarian Consolidated Municipal Loan of September 1, 1926, and 6% Municipality of the City of Budapest External Sinking Fund Gold Loan of June 1, 1927, was denied for the reason that such loans were not obligations of the Government of Hungary within the purview of Section 303(3) of the Act. (*Claim of Walter W. Winget*, Claim No. HUNG-20122, Dec. No. HUNG-50, 10 FCSC Semiann. Rep. 30 (Jan.-June 1959).) This ruling accorded with the Commission's Panel Opinion No. 31 of July 25, 1956, the pertinent part of which follows:

The essential part of [Section 303(3)] as it relates to the question provides for the determination of claims *against the Governments of Bulgaria, Hungary, and Rumania*, arising out of the *failure to meet obligations* expressed in dollars arising out of contractual or other rights acquired prior to certain dates and which became payable prior to September 15, 1947.

It has been concluded in a previous issue that under Section 303(3) of the Act only those dollar bond claims and interest coupon claims which became payable prior to September 15, 1947 are deemed compensable.

The question distinguishes between dollar bonds issued by the Governments of Bulgaria, Hungary and Rumania and the dollar bonds issued by the political subdivisions of such governments. The issue then poses the question of whether bonds of political subdivisions can be considered contractual obligations of the three governments.

The term "political subdivision" has been defined as a true government subdivision such as a county, township, etc. (*Commissioner of Internal Revenue v. Shamberg's Estate*, 144 F. 2d 998, 1004 (2d Cir. 1944)) and as such,

is capable of conducting its own affairs separately and independently from each other or from the national state. Obviously a political subdivision may issue bonds as a function within its own right in financing public works projects, utilities, improvements, etc. The credit of such subdivisions is pledged in the issuance of such bonds.

What, then, was contemplated by the Congress, concerning the contractual obligations or dollar bond claims, in the enactment of Section 303(3) as it relates to the instant issue? The Act provides that the Commission determine claims against the *Governments* of Bulgaria, Hungary and Rumania. The primary purpose in the interpretation or construction of the words of a statute, of course, is the accomplishment of the legislative intent. (*Vermilya-Brown Co., Inc. v. Connell*, 335 U.S. 377 (1948).)

The legislative history of the Act suggests that the term "against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to * * * meet obligations * * *" are claims against the three governments. The Senate Committee on Foreign Relations in reporting on the amendments to the Act in its discussion of H.R. 6382, stated, with respect to Section 303(3), the following:

The purpose of the present bill is to establish a claims program for the benefit of American nationals * * * for * * * prewar governmental debt (bond) claims, against the Governments of Bulgaria, Hungary, and Rumania, * * *. (S. Rep. No. 1050, 84th Cong., 1st Sess. 1 (1955).)

Prewar government debt claims contemplate those claims based upon the failure of any of these governments to meet their bond obligations or other debts. (*Id.* at 5.) Claims dealt with in Section 303(3) of the bill relate to contractual obligations, principally rights in bonds, *issued by the Governments of Bulgaria, Hungary, and Rumania.*

Other congressional reports and debates pertaining to Section 303(3) further substantiate the interpretation of this section as claims dealing in bonds issued by the three governments or other contractual obligations of such governments. The legislative history is void of any reference to the contractual obligations of the political subdivisions of the three governments.

It is known, however, that the Municipality of the City of Budapest concluded a loan with a group of New York banks headed by the Bankers Trust Company, in order to satisfy pending liabilities and for the purpose of financing public works. This loan commonly referred to as the "6% Municipality of the City of Budapest gold dollar loan of 1927," was in the amount of \$20,000,000 of which \$10,750,000 was placed in the United States, \$3,500,000 in the Netherlands, and \$5,750,000 in Great

Britain. The maturity date is June 1, 1962. (COMPASS 1943, Hungary, 150.)

However, this bond issue has never been considered a government bond. These bonds were issued on the credit of the Municipality of the City of Budapest and the purchasers of such bonds did so with the knowledge of this fact. It is a well established fact that a political subdivision cannot pledge the credit of its national government since they are distinct and separate entities.

Bonds and obligations of private enterprises.—The Guaranty Trust Company of New York filed a claim as trustee or paying agent on behalf of unidentified bondholders for various bond issues: Farmers National Mortgage Institute 7% Hungarian Land Mortgage Bonds of 1928; Hungarian Land Mortgage Institute 7½% Land Mortgage Bonds of 1926 (Series A and Series B); Hungarian Central Mutual Credit Institute 7% Land Mortgage Bonds of 1927 (Series A); National Hungarian Industrial Mortgage Institute, Ltd., First Mortgage 7% Bonds of 1928 (Series A). The claim, based upon bonds of private banking institutions, was found to be not compensable under Section 303(3) of the Act inasmuch as it involved no obligations for which the Government of Hungary was responsible. The Commission found that in some of the various mortgage bond issuing institutions the Hungarian Government provided a portion of the capital, and in some instances one or more managing officials were appointed by the national government, but in every instance the institution was organized as a separate legal entity. No facts or circumstances were found by the Commission to support a conclusion that the Government of Hungary incurred obligations with respect to the bond contracts such as to give rise to a compensable claim under Section 303(3) of the Act. (*Claim of Guaranty Trust Company of New York*, Claim Nos. HUNG-21309 through HUNG-21312, Dec. No. HUNG-714, 10 FCSC Semiann. Rep. 46 (Jan.-June 1959).) For the same reason, a claim based upon bonds issued by the Hungarian-Italian Bank, Ltd., was denied. (*Claim of Margaret Farrell Wotton*, Claim No. HUNG-21540, Dec. No. HUNG-347, 10 FCSC Semiann. Rep. 36 (Jan.-June 1959).) Even where the corporate bond was a mortgage bond, and repayment of the loan was secured by property of the corporation, as in the case of the 7% bonds of the Rima Steel Corporation due on February 1, 1955, the claim was denied. The Commission held that the additional element of governmental taking of the mortgaged property was certainly against the interest of the bondholders, since it left them unable to proceed against the security for the debt, but this did not alter the nature of the claim. It remained a type of claim which could be found compensable only under Subsection (3) of Section 303 of the Act, if at all, and the specific requirements of that section were not fulfilled. (*Claim of Pauline V. Brower*, Claim No. HUNG-20190, Dec. No. HUNG-1438.)

Attorney's lien.—Another claimant had been attorney for the plaintiff, the American Union Bank, in securing a judgment in the Supreme Court of New York, New York County, against the

defendant Banca Marmorosch Blank & Co., S.A., and assertedly was entitled to one-half of any sums collected under the judgment. He contended that the nationalization of the judgment-debtor, the Banca Marmorosch Blank & Co., S.A., constituted a taking of his property within the purview of Section 303(2) of the Act, and also that since under the nationalization statutes the Government of Rumania assumed the obligations of nationalized enterprises, the judgment became its obligation within the meaning of Section 303(3) of the Act. The Commission held that an attorney's lien does not constitute a property interest in the judgment-debtor's property, nor does the lien itself extend to such property. Such right is one of priority only in the sums realized from the execution of the judgment; it does not include a right to maintain an action on his own behalf against the debtor as an assignee of the judgment. (Restatement of Agency, Sec. 464, p. 1093; 5 Am. Jur., Attorneys at Law § 248, 410.) Under the conceded facts, the judgment-debtor no longer possessed available assets, because they had passed into the ownership of the State of Rumania or its agencies. Certainly they did not thereby become the property of the claimant. The Commission further held that the claim was not compensable under Section 303(2) of the Act, because even had the Government of Rumania assumed the obligation of the judgment, it was one which was due to the judgment-creditor, and not to the claimant, the attorney for the judgment-creditor. (*Claim of Charles Chester Pearce*, Claim No. RUM-30404, Dec. No. RUM-493, 10 FCSC Semiann. Rep. 115-117 (Jan.-June 1959).)

Loss of earnings and license to do business.—A related issue was presented in a claim based upon loss of earnings caused by Rumanian statutes rendering citizens of the United States ineligible for employment in Rumania. The Commission held that deprivation of the ability to earn wages does not involve the loss of or damage to property belonging to claimant. Such claim is not within the purview of either Section 303(1) or Section 303(2) of the Act, both of which require, as a prerequisite to an award, that there have been loss of or damage to property belonging to claimant or a predecessor in interest. Similarly, the claim does not fall within Section 303(3) of the Act since it is not based on a contractual or other obligation of the Government of Rumania which is expressed in currency of the United States. (*Claim of Anna Ide*, Claim No. RUM-30441, Dec. No. RUM-375, 10 FCSC Semiann. Rep. 113-114 (Jan.-June 1959).)

This ruling was followed even in a case when there was some indication that claimant's deprivation of the license to conduct business was due to discriminatory pressure. The Commission held that losses sustained as a result of a prohibition against continuing business and the cost of preparation of claims are not compensable under Title III of the Act. (*Claim of Jacob J. Roder*, Claim No. RUM-30337, Dec. No. RUM-801, 10 FCSC Semiann. Rep. 124 (Jan.-June 1959).) The reasons for such ruling were more explicitly stated in another case involving a license to operate a moving picture theater. The Commission held that it is universally recognized that the granting of a license to do business is a matter "essentially of Municipal, as distinguished from

International Law.” (II Oppenheim, International Law 319 (7th ed. 1952).) Thus, a state may, as a general rule, grant, revoke, or deny a license without violating international law. Where, however, the action is coupled with a denial of justice, such as discriminations against aliens, it ripens into a claim recognized under international law. (Borchard, *The Diplomatic Protection of Citizens Abroad* 291, 334 (1928).) The Commission found that there had been no showing that the revocation of claimant’s license, if such occurred, was coupled with a denial of justice so as to give rise to a claim under international law. Similarly, the fact that the Government of Hungary may have interfered with the contracts to which claimant was a party did not constitute a taking of claimant’s property. In this respect, the Commission’s decision contained the following quotation:

... the notion that the prevention of the fulfillment of a contract is a taking of property, goes beyond the existing limits of the law and opens up an unbounded and unexplored range of State responsibility. Even the constitutional law of the United States, with its meticulous conceptions of “due process of law” has not gone that far. (Feller, *The Mexican Claims Commission* 124 (1935).)

Accordingly, the portions of the claim based upon contracts to show claimant’s movie film in Hungary, and for consequential losses assertedly resulting from the fact that claimant could no longer continue its business in Hungary after the nationalization of the motion picture industry, were denied. (*Claim of Motion Picture Export Association of America, Inc.*, Claim No. HUNG-21133, Dec. No. HUNG-1652, 10 FCSC Semiann. Rep. 62-63 (Jan.-June 1959).)

Pensions.—Claimant stated that as a retired employee of the British-Hungarian Bank, Ltd., in Hungary, who made contributions to a pension fund, he was entitled to a pension payable in pengos, and that the Government of Hungary had confiscated his rights against the bank. The Commission held that while claimant may have had certain contractual rights against the bank, he was not a stockholder and did not possess any proprietary interest in the bank. Consequently, the nationalization of banks in Hungary did not constitute a taking of any rights which claimant may have had against the bank, within the meaning of Section 303(2) of the Act. The Commission found the provisions of Section 303(3) inapplicable because claims based upon obligations expressed in currencies other than that of the United States are not included thereunder. (*Claim of Julius Schey*, Claim No. HUNG-20412, Dec. No. HUNG-605, 10 FCSC Semiann. Rep. 41 (Jan.-June 1959).)

Old age pension and sick benefits due from the *Országos Tarsadalombiztosító Intézet* under the social security system of Hungary, to which claimant contributed for 26 years, were denied by the Commission because such benefits were payable in the national currency of Hungary and not in United States dollars and for that reason did not come within the purview of Section 303(3) of the Act. (*Claim of John Toth*, Claim No. HUNG-21362, Dec. No. HUNG-371.)

CLAIMS AGAINST ITALY

ITALIAN CLAIMS PROGRAM STATISTICS

Statutory authority: Title III of the International Claims Settlement Act of 1949, 69 Stat. 570 (1955), 22 U.S.C. §§ 1641-1641q (1964), as amended, 72 Stat. 531 (1958), 22 U.S.C. 1641c, 1641j (1964).

Number of claims: 2,246.

Amount asserted: \$27,412,985.

Number of awards: 482.

Amount of awards: Principal, \$2,730,146.

Interest, \$929,165.

Amount of fund: \$5,000,000.

Program completed: May 31, 1960.

In the Matter of the Claim of

Claim No. IT-10251
Decision No. IT-272

HARIKLEIA G. PAPACOSTAS

Against the Government of Italy

Claim denied where owner, a United States national, died in 1941 and property was inherited by nonnational of the United States and damaged thereafter. For compensability, property must have been owned by United States national on date of loss and continuously thereafter.

PROPOSED DECISION

This is a claim for \$22,000.00 filed by Harikleia G. Papacostas, a Greek national, for damage to real property in Fourne, Greece, during May 1941, and loss of income resulting from such damage, during the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

Section 304 of the aforesaid Act provides for the receipt and determination by the Commission, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, of the validity and amounts of claims of nationals of the United States against the Government of Italy, arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy.

Under a well established principle of international law, eligibility for compensation requires that the property which was the subject of damage or loss must have been owned by a United States national at the time the damage or loss occurred and *that the claim arising as a result of such damage or loss, must have been continuously owned thereafter by a United States national or nationals.*

Claimant has submitted evidence showing that the property, on which the subject claim is based, was owned by her husband, George I. Papacostas, a naturalized citizen of the United States, until his death in 1941. There is no indication whether George I. Papacostas died intestate. The surviving widow, the claimant, has filed a claim for losses and damages to certain properties located on the Island of Crete which she allegedly inherited from her husband. Such losses and damages are shown by the evidence to have occurred on various occasions between the years 1942 and 1945.

The records suggest that the claimant, Harikleia G. Papacostas, was not a national of the United States at the time of her alleged inheritance or at the time of the loss of or damage to the properties described herein, and that she has not since acquired United States citizenship.

Under Greek civil law, property passes in succession to the heirs on the death of a person. Therefore claimant acquired ownership of the property on the death of her husband in 1941, prior to the time the damage occurred.

It is concluded, in view of the foregoing that the subject property was not owned by a national of the United States at the time of its loss since the claimant has not satisfied the requirements of eligibility, in that she was not a national of the United States on the date of loss nor at the time of settlement of the subject claim.

It is concluded, therefore, that this claim should be, and hereby is denied. Other elements bearing on eligibility have not been considered.

Dated at Washington, D.C.
July 17, 1957.

Nationality requirements.—Section 304 of the 1949 Act authorizes the determination of certain claims of nationals of the United States against the Government of Italy, stating no specific requirement as to the period of time during which ownership of the claim must have been in a United States national or nationals. The instant claim illustrates that, as in claims against Bulgaria, Hungary, and Rumania under Title III of the Act, the Commission applied the principle of international law requiring that the property have been owned by a United States national at the time of loss, and that the claim arising therefrom have been owned by a United States national or nationals continuously thereafter. After issuance of the Final Decision in *Claim of Benedict Lustgarten*, Claim No. RUM-30575, Dec. No. RUM-434, 10 FCSC Semiann. Rep. 119 (Jan.-June 1959), this continuity of ownership by United States nationals was required, in all claims under Title III of the Act, until the date of filing of a claim with the Commission. Discussion of this matter appears in the annotations to *Claim of Margot Factor*, appearing at page 168.

In the *Papacostas* claim, at no time between the date of loss and the date of filing the claim was the claimant a national of the United States. In another claim, two of the claimants had never been United States nationals, and the third had been naturalized in 1929 but his naturalization was cancelled on June 6, 1950 because of expatriation. The claim was denied for lack of continuous ownership by United States nationals after the date of loss.

(*Claim of George Gust Camaras, et al.*, Claim No. IT-10127, Dec. No. IT-179, 10 FCSC Semiann. Rep. 138 (Jan.-June 1959).)

In a claim filed by a husband and wife, it was found that the husband was the sole owner of the property which had been lost. His naturalization on June 28, 1929 had been cancelled in 1936 for expatriation, and he returned to the United States in 1945 and was renaturalized on November 9, 1950. His wife had been a national of the United States since birth. The claim was denied because the husband was not a United States national at the time of loss of the property; and the wife, although a United States national at the time of loss, had no ownership interest in the property. (*Claim of Alexander A. Yankopoulos, et al.*, Claim No. IT-10279, Dec. No. IT-275, 10 FCSC Semiann. Rep. 145 (Jan.-June 1959).)

Effect of amendment of August 8, 1958 on nationality requirements.—On August 8, 1958 Section 304 of the Act was amended to require the Commission, after payment of the principal amounts of all awards made under the section as originally enacted, to determine claims by persons who were citizens of the United States on August 9, 1955, the date on which Section 304 first became law. Thereupon the Commission re-examined all claims against Italy which had been denied for failure to meet the nationality requirements, and granted awards to such of the claimants as had become United States nationals on or before August 9, 1955 and whose claims were otherwise valid. For example, a claim based upon damage to real and personal property in Greka, Olympia, Greece, owned by a claimant who became a United States national on January 14, 1944, and occurring on June 8, 1943 as a consequence of military operations in which Italy participated, was denied because the property was not owned by a United States national at the time of damage. After the amendment of Section 304, the claim was reconsidered and an award was granted, the Commission stating:

A determination must now be made as to whether or not a claim presenting such a set of facts can be allowed under Section 304 of the Act, as amended.

It is noted that the amendment does not speak specifically of nationality at the time of damage, and that the statutory requirement to determine claims of nationals of the United States in accordance with the substantive rules of international law had not been removed.

It is a well known and long established rule, followed without exception by this Commission and its predecessors, that a claim cognizable under principles of international law does not come into existence unless the property which is the subject of the claim was owned by a national of the United States at the time of damage. Otherwise it cannot be said that the United States has received an injury or has a legal cause to complain against another nation. (Borchard, "Diplomatic Protection of Citizens Abroad," p. 351; Whiteman, "Damages in International Law," Vol. 1, p. 96; Judge Parker in Administrative Decision No. V, the Mixed Claims Commission, United States and Germany, "Decisions and

Opinions" 1928, pp. 145, 176-177; Jessup, "A Modern Law of Nations," p. 99; Moore, "Digest of International Law," Vol. VI, pp. 636-637; Hackworth, "Digest of International Law," Vol. V, p. 802; Ralston, "The Law and Procedure of International Tribunals," pp. 161-162; Hyde, "International Law as Applied by the United States," Vol. II, p. 893; Nielsen, "International Law Applied to Reclamations," p. 13; Oppenheim, "International Law," 6th Ed., Vol. 1, p. 314, edited by Lauterpacht.)

The property which is the subject of the claim before the Commission was not owned by a United States national at the time of damage and the United States received no injury. Therefore, the possible allowance of the claim under the amendment would at first appear to conflict with the foregoing rule. In view of the general and long acceptance of the rule and in the absence of clear and positive language, an intent on the part of the Congress to override it is scarcely to be presumed. That the Congress had no such intent is clearly shown in the Report of the Foreign Relations Committee (Senate Report No. 1794, 85th Congress, pp. 8-9).

Careful consideration of the matter leads to the conclusion that without doubt Congress had in mind to reaffirm the rule rather than to override it.

Nevertheless it is the considered opinion of the Commission that the instant claim is entitled to an award under Section 304, as revised, for the following reasons.

An international claims settlement is founded on the wrong done to a nation itself through injuries to its nationals. (Feller, *The Mexican Claims Commission*, p. 83 *et seq.*, and authorities cited *supra*.) A settlement fund when received, and at least unless otherwise committed by the terms of the settlement agreement, belongs to the nation whose nationals suffered the injuries. (*First National City Bank of New York v. Gilliland*, 257 F. 2d 223, 227.)

Under the amendment to Section 304, the rights of persons who do have valid claims under rules of international law have been preserved. What the Congress has done is merely to provide for the disposition of any balances which may remain in the fund received from Italy after the payment of such claims. This claim, although not cognizable under rules of international law, is allowable within the class which, by specific legislative authorization may be entitled to participate in any such residual disposition.

The award contained the following proviso: "PROVIDED that no payment shall be made with respect to this award until payment in full, from the Italian Claims Fund created pursuant to Section 302, of the principal amounts (without interest) of all awards upon claims determined under the original provisions of Section 304." (*Claim of Peter Allen*, Claim No. IT-10640, Dec. No. IT-81-2, 10 FCSC Semiann. Rep. 154 (Jan.-June 1959).)

Subrogee claims.—A shipment of flashlights belonging to a corporation which qualified as a United States national was removed from a vessel without the owner's consent and placed in a warehouse in Massawa, Eritrea, where, upon Italy's entry into the war, it was seized by Italian authorities. The claimant, another corporation qualifying as a United States national, had insured the property against loss, and paid the aggrieved property owner \$3,401.01 under the terms of the insurance contract. The Commission held that in accordance with a subrogation agreement the claimant became the real party in interest, and granted an award in the amount of \$3,401.01, stating:

By virtue of a familiar principle, recognized and applied alike by courts of law and of equity since time immemorial, an insurer who indemnified the person who has suffered loss through another's wrongdoing, thereby acquires, to the extent of such indemnification, the assured's rights against the wrongdoer; and the insurer thus—by way of subrogation—becoming entitled to the assured's legal remedies, may enforce the same either "at law," by an action in the name of the assured, or "in equity," by suit in the insurer's own name. *The Potomac*, 105 U.S. 630 * * * U. S. v. So. Carolina State Highway Dept., 171 F.(2d) 893.

(*Claim of Federal Insurance Company*, Claim No. IT-10370, Dec. No. IT-456, 10 FCSC Semiann. Rep. 150 (Jan.-June 1959).)

In a similar claim, the Commission held that claims of subrogee insurance companies were subject to the same nationality requirements as other claims under Section 304. Where the claimant was an insurance company which qualified as a United States national, but evidence had not been submitted to establish that the insured, who owned the property at the time of loss, also qualified as a United States national, the claim was denied by Proposed Decision. This occurred before the amendment of August 8, 1958 concerning nationality requirements. The amendment, when it came, had no effect upon this claim inasmuch as evidence was submitted to establish the United States nationality of the insured at the time of loss, so that an award was granted by Final Decision without the proviso requiring prior payment in full of the principal amounts of all awards determined under the original provisions of Section 304. (*Claim of Continental Insurance Company*, Claim No. IT-10278, Dec. No. IT-455, 10 FCSC Semiann. Rep. 151 (Jan.-June 1959).)

Filing period.—Section 306 of the Act provided that the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed, "which limit may not be more than one year after such publication, except that with respect to claims under Section 305 this limit may not exceed six months." The Commission, in accordance with the Congressional mandate, published its Regulations in the Federal Register on September 30, 1955 designating a one-year period for the filing of claims under Section 304. Inasmuch as September 30, 1956 fell on a Sunday, the last day for filing such claims was deemed to be midnight of October 1, 1956. This termi-

nal date for filing claims was a statutory limitation which the Commission had no authority to waive or extend. Accordingly, where a claim was filed subsequent to October 1, 1956, it was denied as not timely filed. (*Claim of Louis (Alois) Herbst*, Claim No. IT-10795, Dec. No. IT-1, 10 FCSC Semiann. Rep. 133 (Jan.-June 1959).)

A claim filed on September 18, 1959 likewise was denied as not timely filed. Claimant objected, stating that inasmuch as he did not become a United States national until April 11, 1947, he would not have been an eligible claimant under the original provisions of Section 304, and accordingly did not file his claim until after the amendment of August 8, 1958 regarding nationality requirements. The Commission held, however, that Congress did not intend to authorize the filing of new Italian claims in addition to those filed within the original one-year filing period, and made no provision in the August 8, 1958 amendment to extend filing rights to new claimants. The denial of the claim was affirmed by Final Decision. (*Claim of Miloye M. Sokitch*, Claim No. IT-10957, Dec. No. IT-949-2.)

In the Matter of the Claim of

Claim No. IT-10056
Decision No. IT-748

GEORGE A. ECONOMY

Against the Government of Italy

Value of life estate deducted in determining award to remainderman, although the life interest was surrendered to him after the property loss occurred, where life tenant was not a United States national on the date of loss.

PROPOSED DECISION

This is a claim for \$25,798.00 filed by George A. Economy, a citizen of the United States since his naturalization on January 24, 1927, for destruction of a two-story dwelling, a warehouse and a stable, and for loss of personal property, i.e., furniture, furnishings, books, two dowries, clothing, wine, oil, grain, etc., situated in the village of Kriekouki, Deme of Erythrai, Greece, arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

The evidence and data before the Commission established that the claimant herein acquired title to the real property on the death of his father on December 15, 1934; that the decedent died testate and a certified copy of his will reveals that claimant took the property subject to a life estate or right of usufruct in

Urania Oeconomous, wife of the decedent. However, the record reveals that Urania Oeconomous executed a waiver of her right of habitation, or life estate, at Thebes, Greece on or about February 5, 1958, in favor of George Economy, the remainderman and claimant herein.

Under general provisions of the law, a life tenant may terminate his or her life estate by surrendering such estate to the remainderman or reversioner. However, since the document waiving the life estate was not executed until February 5, 1958, it would appear that at the time the damage occurred in or about April 1943, said property was encumbered with a life estate in favor of Urania Oeconomous, who at the time of loss was approximately 58 years of age. The claimant's interest in the damaged property was, therefore, a remainder interest and the value of that interest must be determined.

The Commission has adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a $3\frac{1}{2}\%$ interest rate compounded annually, as prescribed by the United States Treasury Department Regulations of June 3 and 4, 1953 for the collection of gift and estate taxes, respectively. (See 17 F.R. 4980, 26 C.F.R. 86.19 (f); 17 F.R. 5016, 26 C.F.R. 61.10 (i).) According to that method of valuation a remainder interest, which is subject to a life estate of a person aged 58 years, is valued at 57.809 percent of the entire estate.

The Commission finds from all the evidence and data before it that the fair and reasonable value of the subject property at the time of loss was \$8,402.00. The claimant's remainder interest therein is 57.809 percent of that amount, or the sum of \$4,857.11.

The above-mentioned will also provided that the claimant constitute dowries for his two stepsisters, Marigho and Sophia Oeconomous, and in event of his failure to provide suitable dowries, he was to be deprived of his right to the property. Evidence of record discloses that claimant has complied with the provisions of his father's will with respect to the aforesaid dowries. The Commission is of the opinion that by delivery of said dowries to the recipients thereof, claimant has divested himself of any right to or interest therein, and that therefore his claim for the loss thereof must be and hereby is denied.

The records further reveal that the destruction and loss of the property for which claim is made occurred on or about April 9, 1943, as a consequence of military operations in which Italy participated.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to George A. Economy in the principal amount of \$4,857.11, plus interest thereon in the amount of \$1,467.66, being 6% per annum from April 9, 1943, the date of the loss, to April 23, 1948, the date of payment by the Government of Italy of \$5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947.

Dated at Washington, D.C.
September 3, 1958.

Ownership interest.—The extent of a claimant's ownership interest in property was a question requiring determination in all claims based upon loss of property. The extent of ownership at the time of filing the claim was relevant to the determination of the amount of the award to which a claimant was entitled. If a claimant had a fractional interest in property at the time of its loss, and subsequently succeeded to additional interests by inheritance or other valid and effective transfer from others, he was the proper party claimant for the entire interest which was his when he filed the claim; but an award could be made only for so much of his interest as to which the requirements of nationality were fulfilled.

From the instant claim it may be seen that a life estate was an interest in property in claims against Italy under Section 304 of the Act, as in other claims programs; and that a claimant owning property subject to a life estate had less than full ownership, the value of his interest being calculated by deducting the value of the life interest, as determined from the Makehamized mortality table, from the total value of the property. This is discussed in the annotations to *Claim of Anny Aczel*, appearing at page 81. The *Economy* claim also is an example of an award covering less than claimant's interest in the property at the time of filing the claim, because failure to meet the nationality requirements as to a part of that interest precluded an award for that part. At the time of loss, claimant owned the property subject to a life estate in another person. That person subsequently waived her right, and the Commission recognized the consequent enlargement of claimant's interest to that of full ownership. However, the life tenant was not a national of the United States, so that claimant's remainder interest, as it existed before the waiver of the life interest, was the only portion which had been owned by a United States national from the time of loss to the time of filing the claim. The award was limited to the value of the remainder interest as of the time of loss.

Additional property, not included in the award in the *Economy* claim, had been transferred by claimant to his two stepsisters as

dowries. The stepsisters were not nationals of the United States. Claimant argued that compensation should be made for the loss of this property by awards to the stepsisters directly, or by an award to him in trust for them. The Commission held, however, that claimant had no ownership interest in this property at the time of loss or thereafter, and denied this portion of the claim.

In the Matter of the Claim of

Claim No. IT-10488
Decision No. IT-92

MARIE VERDERBER

Against the Government of Italy

Claims for property losses in Yugoslavia attributable to Italian action during World War II recognized under Section 304, Title III of the 1949 Act.

Exchange rate of Yugoslav currency, 44 dinars for \$1.00, which prevailed in 1938, applied under Section 304.

Awards under Section 304 increased by interest at rate of 6% per annum from date of loss to April 23, 1948, date of payment by Italy pursuant to Memorandum of Understanding of August 14, 1947.

PROPOSED DECISION

This is a claim for \$2,050.00 by Marie Verderber, a citizen of the United States since November 13, 1928, the date of her naturalization, and is for property destroyed in Tolin, Gotenica, Yugoslavia, as a result of the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

Claimant previously filed a claim for the taking of her property by the Government of Yugoslavia under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949. This claim was allowed and an award was made to the claimant only to the extent of value of her unimproved property in the amount of \$205.98. The information and evidence before the Commission have been incorporated into the present claim.

It is established by certified extract from the Land Register of the County Court of Kocevje (Docket No. 29) that claimant was the owner of the family dwelling with barn and hayloft for which claim is made.

It is also established by the records of the Commission that claimant's dwelling, barn and hayloft, household furniture and farm machinery were destroyed during 1942 as a consequence of military operations in which Italy participated. The record

further shows that the assorted fruit trees were not damaged or destroyed. While the date of the loss is not definitely established by the record, it is deemed to have occurred on or about July 1, 1942 for the purpose of this decision.

The Commission finds, on the basis of all the evidence and data before it, that the fair and reasonable value of all the property destroyed was 24,900 dinars. This amount converted into dollars at the rate of 44 dinars to \$1.00, the rate adopted by the Commission in making awards based upon 1938 valuations, equals \$565.91.

AWARD

On the above evidence and ground, this claim is allowed and an award is hereby made to Marie Verderber, claimant, in the amount of \$565.91 with interest thereon at 6% per annum from July 1, 1942, the date of the loss, to April 23, 1948, the date of payment by the Government of Italy of \$5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947.

Dated at Washington, D.C.
January 30, 1957.

Losses outside of Italy.—Article 78 of the treaty of peace with Italy, signed at Paris, France, on February 10, 1947 and effective September 15, 1947 (61 Stat. 1245, T.I.A.S. 1648), provided for the restoration by the Government of Italy of all legal rights and interests in Italy, and the return of all property in Italy, of the United Nations and their nationals; or for the payment of compensation where the property could not be returned or had suffered injury or damage as a result of the war. Notwithstanding certain territorial transfers provided for in the treaty, Italy continued to be responsible under Article 78 for loss or damage sustained during the war by property of United Nations nationals in territory ceded to other countries and in the Free Territory of Trieste. Pursuant to the treaty, claims for property losses in Italy and the ceded territories were honored and compensated by the Conciliation Commission in Rome, Italy.

In addition, Italy paid to the United States Government the sum of \$5,000,000.00 in accordance with a Memorandum of Understanding, signed and entering into force on August 14, 1947 (61 Stat. 3962, T.I.A.S. 1757), Article II of which stated "... this sum to be utilized, in such manner as the Government of the United States of America may deem appropriate, in application to the claims of United States nationals arising out of war with Italy and not otherwise provided for."

Under Section 304, Title III, of the 1949 Act, the Commission is directed to “. . . receive and determine, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, the validity and amount of claims of nationals of the United States against the government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy.”

Accordingly, awards made under Section 304 of the Act were for property losses occurring outside of Italy and the ceded territories and therefore not covered by the treaty of peace, as in the *Verderber* claim where the property was in Yugoslav territory occupied by Italian military forces in 1942 when it suffered damage attributable to Italian Army action.

Other awards were made for war damage in Greece (*Claim of George A. Economy*, appearing at page 272); in Albania (*Claim of Spiros Stoyas*, Claim No. IT-10683, Dec. No. IT-603); in Mas-sawa, Eritrea, a former Italian colony in Africa (*Claim of Federal Insurance Company*, Claim No. IT-10370, Dec. No. IT-456, 10 FCSC Semiann. Rep. 150 (Jan.-June 1959)); in North Africa (*Claim of National Jewish Welfare Board*, Claim No. IT-10517, Dec. No. IT-934); in Tunisia (*Claim of Socony Mobil Oil Company, Inc.*, Claim No. IT-10316, Dec. No. IT-947); in the Italian Concession of Tientsin, China, where Italian local authorities seized assets of an American corporation (*Claim of Chinese Engineering & Development Company, Inc.*, Claim No. IT-10017, Dec. No. IT-433, 10 FCSC Semiann. Rep. 148 (Jan.-June 1959)); in territory occupied by Italian troops in France (*Claim of Gerald Lewis Healey*, Claim No. IT-10390, Dec. No. IT-723); and on the high seas (*Claim of Garcia & Diaz, Inc.*, Claim No. IT-10440, Dec. No. IT-943).

It will be noted from the *Verderber* decision that under the Yugoslav claims program the same claimant received an award representing the value of her property in its postwar condition when it was taken by the Government of Yugoslavia. The award in the claim against Italy provided compensation for the earlier war damage, and there was no duplication or overlapping in the two awards.

Losses sustained on the high seas included so-called “cargo in transit” losses. Early in June 1940, a claimant’s merchandise (cork) was loaded in Algeria aboard an Italian vessel bound for New York. The Government of Italy, in contemplation of the imminent declaration of war, ordered the Italian ship to approach an Italian port. The captain of the ship carried out this order whereupon the cargo was removed in the port of Naples and placed in storage at a warehouse. Subsequently, the cargo was sold by order of the Italian Government, resulting in a total loss to the claimant. The Commission held that the merchandise had been “in transit” from an Algerian port to New York and that the placement of the cargo in a warehouse in an Italian port without consent of the owner did not deprive the cargo of its “in transit” status. The loss was not considered as having occurred in Italy, but in transit from one foreign port to another; and the Commission concluded that the claim for the loss was compensable

under Section 304 of the Act. The loss included the value of the cargo plus freight and marine insurance expenditures. (*Claim of Armstrong Cork Company*, Claim No. IT-10000, Dec. No. IT-118, 10 FCSC Semiann. Rep. 138 (Jan.-June 1959).)

Personal injury or death.—Claims against Italy for compensation for personal injury or death were not dependent upon whether or not the action complained of occurred in Italy or the ceded territories, because the treaty of peace made no provision for such compensation in any event. Rather, compensability of this type of claim under Section 304 depended upon whether or not there had been a violation of a rule of international law. Such claims were determined in accordance with suggestions contained in Panel Opinion No. 9 of April 1956 as follows:

The panel concludes that claims based upon death or personal injuries sustained by American civilians as a result of internment during the war by the Government of Italy are compensable under Section 304 of the Act, provided it is shown that a rule of international law had been violated. However, it is the opinion of the panel that the amount of awards in such cases should be determined in accordance with schedules and standards which govern similar claims under other federal statutes providing such benefits. It is therefore concluded that the following standards should serve as guides in making such determinations, and that in no event should any award exceed the sum of \$7,500.

Pertinent parts of the supporting memorandum follow.

Section 304 of the Act provides as follows:

The Commission shall receive and determine, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy.

In connection with a related issue, it was concluded that claims for loss or damage to property located outside of the territorial limits of Italy are compensable under the statute. (Panel Opinion No. 8, March 1, 1956.) The considerations which led to that conclusion have a direct bearing on the instant issues. To this extent at least they warrant attention and merit recapitulation.

In general, the treaty of peace with Italy made provision for property losses sustained in Italy. (Article 78.) No other specific categories of claims appear to be covered by those provisions. Accordingly, the broad language of section 304 of the Act, referring to claims for which provision was not made in the treaty of peace, may reasonably be construed as authority to compensate claims arising out of death or personal injuries. By the same token, it may be concluded that claims of any type

which are not covered by the express terms of the treaty may be recognized under the statute. How far this theory may be projected is a matter which the Commission will have to consider as other related issues are presented. The discussion herein is restricted to the question concerning the compensability of claims based upon death or personal injuries suffered by American civilians as a result of internment by the Government of Italy during World War II.

The legislative history of Public Law 285 appears to suggest that the answer to the question should be in the affirmative. At the hearings before the Senate Committee on Foreign Relations, Commissioner Henry J. Clay stated, in part as follows (Hearings on July 8 and 11, 1955, p. 61) :

The purpose of the so-called Lombardo fund of \$5 million is, in general, to take care of property losses relating to property located outside of Italy and attributable to Italian military action . . . and certain personal injury and similar non-property losses which arose in Italy itself but were also not covered by the treaty.

At the same hearings, a local attorney made the following statement (*Id.* at p. 93) :

Secondly, it would provide for the payment of claims for personal injury, such as, for example, claims of American citizens who, having been caught in Italy, actively helped the underground forces fighting the Fascists and the Nazis and who were thereby injured, many in combat.

At the hearings before the House Committee on Foreign Affairs, Commissioner Henry J. Clay made the following remarks (Hearings, on March 22, 30, April 19, 20, 21, and 22, 1955, pp. 92-93) :

It was not considered desirable in the drafting of the proposed bill to undertake a detailed or limited list of the various categories of claims which would be compensated from the \$5 million fund under title III.

The Commission feels that this is a kind of matter which would preferably be left for administrative determination by the Commission. But to give the Committee an idea of the nature and the type of claims that have already been submitted since the signing of the Memorandum of Understanding there are approximately 60 claims that have been filed with the State Department which involve right to recover from this \$5 million fund.

. . . These are the types of claims which set forth the type of relief desired: . . . the losses resulting from the internment of United States civilians in Italy and in other countries under Italian military control. Death claims resulting from malnutrition

or similar causes attributable to war with Italy. And lastly, claims for personal injury resulting from inhumane treatment to which United States civilians outside of Italy were allegedly subjected by Italian military authorities.

The House Committee on Foreign Affairs which favorably reported on H.R. 6382, the bill finally enacted as Public Law 285, made the following statement with respect to section 304 (House Report No. 624, 84th Congress, 1st Session, p. 14) :

Property losses outside of Italy and claims for personal injury, suffering, and other losses would be compensable.

It is interesting to note that the War Claims Commission, in its supplementary report (House Document No. 67, 83d Congress, 1st Session, p. 158) on claims arising out of World War II, recommended that the \$5 million fund be transferred to the War Claims Fund and that the augmented fund be utilized to pay "internee claims based on internment in Italy, and claims for disability and death resulting from injuries sustained in Italy, or as a direct result of Italian action."

Further evidence to support the conclusion that the issue herein warrants an affirmative response appears from a study of the negotiations which preceded the approval of the Memorandum of Understanding. Throughout these negotiations, specific categories of claims were proposed to be included in the agreement. On each occasion, a provision was proposed for the benefit of civilian American citizens who suffered personal injuries or death as a result of the war with Italy. Inasmuch as the negotiators failed to agree on the categories of claims, it was finally decided that the United States have complete discretion in determining which claims should be compensated from the \$5 million fund. Accordingly, Article II of the Memorandum of Understanding provides as follows:

The Government of Italy agrees to pay and deposit with the Government of the United States of America on or before December 31, 1947, the sum of \$5,000,000 (five million dollars) in currency of the United States of America, this sum to be utilized, in such manner as the Government of the United States may deem appropriate, in application of the claims of United States nationals arising out of war with Italy and not otherwise provided for.

In this connection, it should be noted that section 304 of the Act speaks of claims for which provision was not made in the treaty of peace with Italy while the Memorandum of Understanding relates to claims not otherwise provided for. Literally, the statute may be construed as authority to compensate claims of every type

and description for which provision was not expressly made in the treaty of peace with Italy. On the other hand, the Memorandum of Understanding may be interpreted to imply that all claims for which provision has been made, whether by the terms of the treaty or otherwise, shall not be compensable.

This particular issue is further complicated by the provision of the Act which requires the Commission to determine claims in accordance with the Memorandum of Understanding and applicable substantive law, including international law. Stated simply, the issue is: Will the provisions of the Memorandum of Understanding, which is a part of international law, prevail over the provisions of section 304 insofar as they may conflict with one another? This problem will be treated at greater length in a subsequent discussion relating to the compensability of claims of military prisoners of war of the Government of Italy. Inasmuch as provision has not been made, either in treaty of peace or otherwise, for the payment of claims of American civilians who suffered death or personal injuries as a result of Italian action during World War II, the resolution of that issue can have no bearing on the question herein. There are, however, other factors which should be considered before determining the instant issue.

The language of Section 304 of the Act, pertaining to claims "against the Government of Italy," necessarily implies that the claim must be in the nature of an international claim, a claim which may be espoused by the United States. It is universally recognized that "Upon the outbreak of war a belligerent acquires a broad right to control enemy persons within its domain." (III Hyde, *International Law*, §§ 616, 617, 676 (2nd rev. ed. 1951).) Thus, a state may detain, intern, or even expel enemy subjects without violating international law. (*Ibid.*) However, while international law does not prescribe precise procedures which must be followed respecting alien enemies, the requirements of justice prohibit cruel and inhumane treatment. In general, international law does not recognize claims for personal injuries resulting from legitimate acts of war. (Borchard, *The Diplomatic Protection of Citizens Abroad*, § 103.) Accordingly, personal injuries suffered during battle, siege, or bombardment are not compensable. (*Ibid.*) The rights of civilians are usually expressed in treaties. For example, the treaty of peace with Italy, concluded on February 26, 1871, provides, in part, as follows (I Malloy *Treaties*, etc. 975 (1910 Art. XXI)) :

If, by any fatality . . . the two contracting parties should be engaged in war with each other, they have agreed and do agree, now for then, that . . . all women and children, scholars of every faculty, cultivators of the earth, artisans, mechanics, manufacturers, and fishermen . . . and, in general, all others

whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons

Such treaties, in which provision is made for the security of the persons of alien enemies, are mere vehicles for expressing the existing and recognized rules of nations (Borchard, *The Diplomatic Protection of Citizens Abroad*, § 46). It would therefore appear that claims of civilians based upon the mere fact of detention should not be deemed to be compensable under section 304 of the Act, nor claims for personal injuries, in the absence of a showing that a rule of international law has been violated.

It may, however, be contended that claims for personal injuries and death arising out of the war in which Italy was engaged should not be compensable on the ground that it would be against public policy. The arguments in support thereof would proceed by examining and discussing the legislative history of Public Law 896, 83d Congress, under which provision was made for civilian American citizens who were captured at certain areas in the Pacific during World War II.

The House Interstate and Foreign Commerce Committee which favorably reported on H.R. 4044, the bill finally enacted as Public Law 896, stated, in part, as follows (House Report No. 976, 80th Congress, 1st Session, pp. 2-7) :

The record shows that while as a matter of national policy no warning was given to American citizens to leave the Philippines and other American Territories and possessions, ample warnings were given to American civilians who resided in Europe and Asia It may, therefore, be said that the American Government discharged its obligation to American citizens who resided in Asia and Europe, and that they chose to stay on at their own risk. . . . On the other hand, it appears to your committee that the United States Government has a clear moral obligation to relieve the distress of those citizens who resided in the Philippines and other American Territories and possessions and who, as a matter of national policy, were not given any warnings to leave and who consequently . . . "found themselves entrapped."

In view of the foregoing, it may be urged that claims of Americans who remained in Italy should not be included in any program under Public Law 285 and that in the absence of express language in the statute to cover such claims, the rationale for Public Law 896 should be deemed to be controlling. While this argument is quite persuasive, it nevertheless must be considered in the light of the distinctions between the War Claims

Act and the International Claims Settlement Act. Under the War Claims Act, the funds utilized for the purpose of paying claims were derived from assets of the enemy seized under the Trading With the Enemy Act. However, the funds provided under section 304 of the International Claims Settlement Act were deposited with the United States by Italy pursuant to the Memorandum of Understanding "in application of the claims of United States nationals arising out of the war with Italy and not otherwise provided for." These circumstances clearly establish that the considerations which governed the claims programs under Public Law 896 are inapplicable under Public Law 285.

In answer to the further contention that a claims program providing for disability and death benefits would necessarily be a great administrative burden, it may be said that any claims program is a burden to a lesser or greater extent. Determining the standards which should be applied in fixing the amount of awards for death or personal injuries is no greater burden than that encountered in the administration of section 7(b) through (g) of the War Claims Act, under which it was necessary to establish the "postwar cost of replacement" of property and the amount required to replace "facilities and capacity." Various guides are available in this respect.

Under the Longshoremen's and Harbor Workers' Compensation Act (Public Law 803, 69th Congress, approved March 4, 1927; 44 Stat. 1424; 33 U.S.C. 902 *et seq.*), as amended, disability benefits are computed by multiplying $66\frac{2}{3}$ per centum of the average weekly wages of a claimant by a fixed number of weeks depending upon the nature of the disability, with certain limitations respecting the amount of compensation. Death benefits are computed on the same basis, in addition to a grant of "reasonable funeral expenses not exceeding \$400." Similar standards appear in the Federal Employees' Compensation Act (Public Law 267, 64th Congress, approved September 7, 1916; 39 Stat. 742; 5 U.S.C. 751 *et seq.*), and under section 5(f) of the War Claims Act, pertaining to civilian American citizens who were eligible for detention benefits under Public Law 896.

In the event it is concluded that claims of civilian Americans, based upon death or personal injuries, should be recognized under section 304 of the Act, the standards set forth hereinafter are recommended for computing awards. While these standards have been suggested by analyses of the three aforementioned statutes which provide such benefits in other cases, they have been modified and simplified to reduce the administrative burden. The following guides appear to be reasonable:

Compensation shall be awarded on the basis of death or personal injury established as of the date of deter-

mination of the claim and shall be paid by lump sum payment as follows:

(a) In case of death, \$7,500.

(b) In case of permanent total disability, \$7,500. The loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof shall constitute prima facie evidence of permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts.

(c) In case of permanent partial disability, compensation shall be as follows:

1. Loss of arm, \$3,500.
2. Loss of leg, \$3,000.
3. Loss of hand, \$2,650.
4. Loss of foot, \$2,165.
5. Loss of eye, \$1,750.
6. Loss of thumb, \$640.
7. Loss of index finger, \$350.
8. Loss of middle finger, \$225.
9. Loss of ring finger, \$215.
10. Loss of little finger, \$90.
11. Loss of great toe, \$325.
12. Loss of other than great toe, \$100.
13. Loss of hearing of one ear, \$650; of both ears, \$2,500.

14. Loss of more than one phalanx of a digit shall be equal to the loss of the entire digit. Loss of the first phalanx shall be equal to one-half of the compensation for loss of the entire digit.

15. Loss of an arm or leg amputated at or above the elbow or knee, respectively, shall be equal to the loss of an arm or leg; if amputated between the wrist and elbow or between the knee and ankle, it shall be equal to the loss of a hand or foot.

16. Loss of binocular vision or of 80 per centum or more of the vision of an eye shall be equal to the loss of an eye.

17. Loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot, shall be proportioned to the loss of the hand or foot occasioned thereby.

18. Permanent total loss of the use of a member shall be equal to the loss of the member.

19. Permanent partial loss or loss of use of a member shall be proportioned to the loss of the member occasioned thereby.

20. Compensation for serious facial or head disfigurement shall be equitable and shall not exceed \$2,000.

21. In all other cases of disability or personal injury, compensation shall be determined in accordance with the facts.

Thus an award of \$1,000.00 was made to a claimant who suffered personal injuries as a result of maltreatment while attending services in a synagogue in Split, Yugoslavia, when Italian troops entered the building, struck the worshipers with gun butts, and ejected them from the building. (*Claim of Zadik Danon*, Claim No. IT-10837, Dec. No. IT-231-2, 10 FCSC Semiann. Rep. 160 (Jan.-June 1959).)

On the other hand, a claim filed for compensation for internment and maltreatment, loss of earnings during internment, recovery of value of personal property sold during the internment, and nonpayment of subsidies allegedly payable to internees was denied. The Commission held that the mere fact of internment is not a violation of international law and that the evidence failed to disclose that claimant suffered treatment which was not in accord with the generally accepted precepts of international law. Additionally, the Commission held that the loss of prospective earnings is not compensable because of their uncertain and speculative nature and that the sale of personal property by claimant's wife in order to maintain herself and family during claimant's period of internment was voluntary, and did not constitute a loss compensable under Section 304 of the Act. As to the claim for loss of subsidies, the Commission held that claimant failed to submit evidence that the Government of Italy was bound under international law to pay subsidies to civilian internees, such as the claimant. (*Claim of Louis Champa*, Claim No. IT-10089, Dec. No. IT-250-2.)

A similar claim in which compensation was sought for imprisonment by the Italian Government was denied because claimant failed to establish that any rule of international law was violated during his internment and detention. (*Claim of Leo Joseph Landshut*, Claim No. IT-10006, Dec. No. IT-246, 10 FCSC Semiann. Rep. 139 (Jan.-June 1959).)

Currency exchange rate.—The evidence and data before the Commission in the *Verderber* claim indicated that claimant's property suffered damage which, expressed in Yugoslav prewar currency, amounted to 24,900 dinars. Based upon the decision in the *Claim of Joseph Senser*, issued in the Commission's proceedings under the Yugoslav Claims Agreement of 1948 and appearing at page 151, the Commission determined that the applicable conversion rate of the prewar dinar currency was 44 dinars for \$1.00. Where the amount of the loss appeared established in some other foreign currency, such as in French francs, the amount of francs was converted into dollars at the established rate of exchange in effect at the time of the loss. (*Claim of Armstrong Cork Company*, Claim No. IT-10000, Dec. No. IT-118, 10 FCSC Semiann. Rep. 138 (Jan.-June 1959).)

Interest on awards under Section 304 of the Act.—In connection with awards under Section 303 of the Act, the Commission concluded that interest should be computed at the rate of 6% per annum, except with respect to war damage awards under Section 303(1). (See annotations to the *Claim of George H.*

Earle, III, and United States of America, at page 190.) War damage claims under Section 303(1) were based primarily on the peace treaties, which not only did not provide for the payment of accrued interest, but expressly limited payment of compensation to two-thirds of the established loss. The Memorandum of Understanding concerning Italian claims, on the other hand, did not provide for any limitation of losses but left the distribution of the \$5,000,000.00 lump-sum payment to the discretion of the United States Government. Moreover, the fund appeared to be sufficient for the payment of the principal and interest of all anticipated awards under Section 304. Having considered all this, the Commission determined that, in claims under Section 304 of the Act, interest at the rate of 6% per annum should be included in awards from the date of loss to April 23, 1948, the date of payment of the \$5,000,000.00 by Italy to the United States Government pursuant to the Memorandum of Understanding of August 14, 1947. The *Verderber* claim provides an example of such an award.

Where a claim was asserted by a subrogee, such as an insurance company which made payment to the insured who suffered the loss, interest was computed from the date of payment to the insured, and not from the date of the original loss. If payment was made subsequent to April 23, 1948, the date on which the sum of \$5,000,000.00 was deposited by the Government of Italy, no interest was allowed on the award. (*Claim of The Continental Insurance Company*, Claim No. IT-10278, Dec. No. IT-455, 10 FCSC Semiann. Rep. 151 (Jan.-June 1959).)

In the Matter of the Claim of

Claim No. IT-10555
Decision No. IT-877

ALBERT FLEGENHEIMER

Against the Government of Italy

Claim based on loss of property in Italy denied under Section 304 of the 1949 Act on the ground that provision was made therefor in the treaty of peace, even though claim filed under the treaty was rejected by Conciliation Commission.

FINAL DECISION

This is a claim for \$8,000,000 filed by Albert Flegenheimer against the Government of Italy under Section 304 of the International Claims Settlement Act of 1949, as amended,¹ for loss of 47,907 shares of stock of the *Societa' Finanziaria Industriale Veneta*, an Italian corporation, on or about March 18, 1941, as a result of an asserted sale thereof in which force or duress had

¹ 22 U.S.C. 1641 (1964); hereinafter referred to as "the Act".

allegedly been exerted by a representative of the Italian Government.

In a Proposed Decision dated December 30, 1958, the claim was held to be not compensable under Section 304 of the Act for the following reasons: claimant failed satisfactorily to establish his United States nationality and therefore failed to qualify as an eligible claimant; provision for such claim was made in the Treaty of Peace with Italy;² and lack of proof that any force or duress was exerted directly or indirectly by the Government of Italy, its representatives or agents.

Claimant objected to the Proposed Decision, and argument was held before the Commission on April 17, 1959, as requested by the claimant, on the nationality and Peace Treaty issues only.

It is contended by the claimant, first, that he has been a citizen of the United States since birth and is, therefore, a national of the United States within the meaning of the Act.

For the purpose of this decision and for such purpose alone, we shall accept this contention.

It is contended by the claimant, secondly, that provision was *not* made with respect to his claim in the Treaty of Peace with Italy and, accordingly, the claim must be determined under Section 304 of the Act. This contention is thus the sole issue presently before the Commission.

For the reasons hereinafter indicated, we can not accept this contention. It is the opinion of the Commission that the law and the overwhelming weight of logic prove conclusively that provision for such claim *was* made in the Treaty of Peace with Italy, and therefore the claim of Albert Flegenheimer before the Foreign Claims Settlement Commission of the United States must be denied.

This Commission operates under clear Congressional mandate evidenced in the Act; a domestic law to be administered by a domestic Governmental agency. Section 304, although it references the Memorandum of Understanding,³ nowhere mentions by specific word any Conciliation Commission. Nor does the Act even suggest the possibility that the Foreign Claims Settlement Commission would be bound by any decisions of such an international tribunal.

The Act gives the Commission the right and the duty to receive and determine claims of nationals of the United States against the Government of Italy . . . with respect to which *provision was not made in the Treaty of Peace with Italy*.⁴

² 61 Stat. 1245 (1947), T.I.A.S. 1648, February 10, 1947.

³ Art. II, Memorandum of Understanding between the Government of the United States and the Government of Italy regarding Italian assets in the United States of America and certain claims of United States nationals, 61 Stat. 3962, T.I.A.S. 1757, dated August 14, 1947 (commonly known as "Lombardo Agreement").

⁴ Section 304.

It becomes our duty, then, to determine whether provision for this claim was made in the Treaty of Peace. We think it clear that it was.

The Treaty requires that the Italian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.⁵

The key word in the crucial sentence of the Act is obviously "provision" . . . i.e., whether the claim was *provided for*. Simple statutory rules of construction would first suggest examining the normal dictionary meaning of a word. One could search any dictionary *ad infinitum* without finding "provided for" defined as synonymous with "satisfied."

Claimant in his argument begins by using the words "provided for," but thereafter abandons them and substitutes the word "satisfied." If this Commission is to have jurisdiction over all claims not satisfied by the Italian Government, it requires only one small step further to argue all claims not satisfied in full. Indeed claimant makes this exact point.

This would mean that any claimant believing his Italian award to be too small, or receiving two-thirds and desiring to get the remaining third,⁶ could appear before the Foreign Claims Settlement Commission and be "satisfied in full." Merely to state this proposition illustrates its manifest absurdity.

If Congress had intended "provided for" to mean "satisfied," it could easily have employed the latter word. Or if Congress had intended "provided for" to mean "paid," this word also was available. It is significant that Congressional draftsmen chose not to use either "satisfied" or "paid."

In brief, claimant is saying that this Commission must take jurisdiction whenever the Conciliation Commission refuses to take jurisdiction itself. We cannot agree that any such basic control over a United States Commission is inherent in the powers of such an international tribunal. Resulting inequities could easily destroy the entire claims program enacted by Congress.

The traditional philosophy of claims programs in the United States envisions strict deadlines for all programs. Congress sets a specific span of time in which the United States tribunal is to complete its work. Payment is intended to go to the basic claimants, not to their grandchildren or great-grandchildren. This Commission has been ever conscious of this fundamental philosophy, and has in fact completed all its programs on time—as

⁵ Art. 78, par. 3.

⁶ Art. 78, par. 4 (a), Treaty of Peace, provides for the payment by the Government of Italy of only two-thirds of the loss suffered.

directed by Congress. The Italian program must be completed August 9, 1959.

Article 83 of the Treaty establishing the Conciliation Commission makes no reference to the time in which all applications before it must be completed. There is thus no deadline whatsoever on the work of the Conciliation Commission.

It might well be queried how the Congressional policy of finality in United States claims programs could ever be carried out, if the Foreign Claims Settlement Commission was required to take jurisdiction of every case after jurisdiction was refused by the Conciliation Commission—bearing in mind the lack of any time limit on the work of the Conciliation Commission.

Further in the interest of finality, Congress has denied claimants the privilege of court review.⁷

Can it seriously be argued that Congress would deny judicial review by United States courts in the interest of finality, and at the same time permit substantial control over a United States Commission by an international tribunal? And even more unusual—by an international tribunal with no deadline on its program?

Carrying claimant's contention further, if those who "never had their day in court" because the door was shut by the Conciliation Commission on ineligibility grounds are to be heard by the Foreign Claims Settlement Commission, what should be done with claimants who were turned down by the Italian Minister of the Treasury or by the Italian Interministerial Commission⁸ on the same grounds? Clearly, these cases, too, would have to be heard by the Foreign Claims Settlement Commission.

Thus a cabinet official or agency, subservient to a foreign prime minister, and subject to all the vagaries of national and international politics would have a powerful control over an independent United States Commission.

What of those cases denied in Italy on the merits? To achieve consistency, would not these, also, have to be then heard by the Foreign Claims Settlement Commission?

Claimant contends the legislative history of Section 304 of the Act shows that Congress intended that this Commission *must* accept claims of United States citizens which have been rejected by the Conciliation Commission on the ground of the alleged ineligibility of the claim.

Congress intended the Foreign Claims Settlement Commission to be independent. It was created free from executive, legislative or judicial control. Certainly Congress did not intend an independent United States quasi-judicial Commission to be subservient

⁷ Section 314.

⁸ Created pursuant to letter dated August 14, 1947, — a part of the Memorandum of Understanding, *supra*.

to an international tribunal, or worse, to a foreign official. The end result of claimant's contention would be administrative and judicial chaos.⁹

Nor can we ignore Congressional approval of a \$5,000,000 settlement fund. In analyzing Congressional intent, we might not be remiss in querying whether Congress had in mind payment of claims in the present category, one single claim of which is for \$8,000,000 alone.

If any further proof of intent were needed, said proof would lie in the clear language of the Memorandum of Understanding stating:

the sum of \$5,000,000 . . . to be utilized in such manner as the Government of the United States . . . may deem appropriate . . .¹⁰

Such language suggests anything but subservience to a foreign tribunal.

Finally, it is strange, to say the least, for claimant to urge this Commission to accept the judicial determination of the Conciliation Commission re ineligibility, and ignore the basis of such decision . . . i.e., lack of American citizenship. Claimant has strongly asserted his American citizenship before the Foreign Claims Settlement Commission, and at the same time demands that we accept the decision of the Conciliation Commission which denied his claim on that precise ground. Claimant has here achieved a true masterpiece of inconsistency.

Thus the clear and obvious meaning of the language of the Act, careful analysis of Congressional intent, and the application of simple logic all militate against acceptance of claimant's theory of the case.

We hold that the claim of Albert Flegenheimer, whether paid or rejected by the Conciliation Commission, has been "provided for" within the meaning of the term as contained in Section 304 of the Act. Therefore, the Foreign Claims Settlement Commission has no jurisdiction in this case.

For the foregoing reasons, this claim must be, and hereby is denied.

The Commission finds it unnecessary to make determinations with respect to other contentions of this claimant.

Dated at Washington, D.C.

May 11, 1959.

⁹ In addition, the possible surplussage of funds (Memorandum of Understanding, 8 U.S.T. 1745, (T.I.A.S. 3924) dated October 22, 1957) to be used by the Conciliation Commission to pay claims of American nationals under the Treaty may well result in future reexamination of American claims which have already been denied. Such action would add further confusion if the Foreign Claims Settlement Commission would have to await final decision of the Conciliation Commission.

¹⁰ Art. II, Memorandum of Understanding, 61 Stat. 3962, T.I.A.S. 1757.

Claims covered by peace treaty.—As shown in the annotations to *Claim of Marie Verderber*, appearing on page 276, awards for property losses in claims against Italy under Section 304 of the 1949 Act were based upon property outside of Italy and the ceded territories, as to which no provision was made in the treaty of peace.

The other side of the coin is displayed in a claim for compensation for damage to real property in Montenero, Italy, which was denied under Section 304 of the Act because provision for such claims was made in the treaty of peace with Italy. (*Claim of Ovidio Antonio Bonaminio*, Claim No. IT-10073, Dec. No. IT-298, 10 FCSC Semiann. Rep. 146 (Jan.-June 1959).) In the same manner, a claim based upon damage to property in Atina, Frosinone, Italy, for which claimant had received 325,000 lire from the Government of Italy, was denied despite claimant's plea that the amount of compensation received was inadequate. (*Claim of Enrico Caira*, Claim No. IT-10933, Dec. No. IT-398, 10 FCSC Semiann. Rep. 147 (Jan.-June 1959).) In another claim, the property was in the Dodecanese Islands, which were ceded by Italy to Greece under Article 14 of the treaty of peace. Inasmuch as Article 78 of the treaty placed responsibility upon Italy for property losses in territories ceded by Italy under Article 14, this claim was denied under Section 304 of the Act because provision therefor had been made in the treaty of peace. (*Claim of Sam Sapounakis*, Claim No. IT-10092, Dec. No. IT-208, 10 FCSC Semiann. Rep. 146 (Jan.-June 1959).) Also denied were claims for war damage in Pola and Fiume, cities ceded to Yugoslavia (*Claim of Yolanda Tomer*, Claim No. IT-10009, Dec. No. IT-316, and *Claim of John Pierino Contus*, Claim No. IT-10032, Dec. No. IT-318), as well as in other former Italian territory ceded to Yugoslavia (*Claim of John Pelozo*, Claim No. IT-10164, Dec. No. IT-311).

In the *Flegenheimer* claim, loss allegedly was suffered on June 6, 1941 when claimant was "forced" to sell to Italian interests certain shares of stock at a price greatly below the actual value of the stock. Claimant first filed a claim for compensation with the Conciliation Commission organized for the settlement of claims of United States nationals against Italy under the provisions of the treaty of peace. The Conciliation Commission declined to entertain the claim because, according to its findings, claimant was not a national of the United Nations at the time of loss. Claimant thereafter filed his claim with the Foreign Claims Settlement Commission contending, but not establishing, that he had been a United States national since birth, and arguing that inasmuch as his claim had been denied by the Conciliation Commission, it was not a claim for which provision had been made in the treaty of peace. The Commission held, however, that a claim arising from the circumstances as alleged by claimant would be one within the provisions of the treaty of peace and therefore not within the purview of Section 304 of the Act, and denied the claim as not compensable under the Act regardless of whether it were allowed or rejected by the Conciliation Commission.

In another type of claim covered by the treaty of peace, the heirs of an estate filed a claim for relief from a patrimonial tax

levied during the war by the Government of Italy on the assets of the estate. Under Article 78 of the treaty of peace, United Nations nationals and their property were exempted from any exceptional taxes, levies or imposts imposed by the Italian Government between September 3, 1943 and September 15, 1947 to meet the costs of the war; and any sums so paid were to be refunded. Finding that the patrimonial tax was of the type described in the treaty provision, the Commission denied the claim as not compensable under Section 304 of the Act. (*Claim of Clotilde Sonnino Treves, et al.*, Claim No. IT-10728, Dec. No. IT-267, 10 FCSC Semiann. Rep. 144 (Jan.-June 1959).)

In the Matter of the Claim of

Claim No. IT-10066

Decision No. IT-434

GORDON THEOPHILUS MALAN

Against the Government of Italy

Claim based upon Italian Government bonds denied under Section 304 because provision made therefor in treaty of peace.

Claim for loss due to devaluation of lire on deposit in Italian bank denied. Currency reform is exercise of sovereign authority not giving rise to claim.

PROPOSED DECISION

This is a claim for \$23,070.00 filed by Gordon T. Malan for himself and on behalf of the other surviving heirs of Theophile Daniel Malan, deceased, for losses sustained as holders of certain bonds and securities and for devaluation of a lire deposit with the Banca d'Italia in Turin, Italy, arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

Section 304 of the aforesaid Act provides for the receipt and determination by the Commission, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, of the validity and amounts of claims of nationals of the United States against the Government of Italy, arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947, and with respect to which provision was not made in the Treaty of Peace with Italy.

The record reveals that the deceased father of the claimant deposited for safekeeping with the Bank of Italy, Turin, Italy, certain prewar bonds, the face value totaling 295,000 lire, namely, Revenue Bonds 5%, Revenue Bonds 3.5%, B. Tes Nov. 5% 40-41, B. Tes Nov. 4% 94-3-2, Elfer 4.5%, City of Turin 5%, and City

of Rome 5%, on which service was suspended at the beginning of World War II.

Italy was obligated under the Treaty of Peace, the appropriate provisions of which became an integral part of the Memorandum of Understanding, an agreement between the Government of the United States and the Government of Italy, to provide for the settlement of its prewar contractual obligations, including bonds, and in connection with formulating an adjustment of Italian dollar bonds, the Government of Italy undertook to guarantee principal and interest of certain described bonds, among them the City of Rome bonds, which are considered to be obligations of semi-governmental agencies. Pursuant to authority granted it by the Government of Italy, the Italian Credit Consortium for Public Works was authorized to offer its bonds in exchange for the outstanding principal amount of the obligations of City of Rome bonds.

Therefore, inasmuch as the adjustment of certain unrepatriated bonds has been authorized and provision for the settlement of prewar contractual obligations, including bonds, has been made by the aforesaid agreement, it would appear from the record that the claimant has failed to exhaust all the remedies available to him against the Government of Italy.

It is suggested by the records that the decedent was the possessor of "special blocked account," No. 7588, on deposit with the above-mentioned bank. Claim is also made for the difference between the value of such account as it existed on September 3, 1939, the date of the deposit at which time the value of the lire assertedly was 19.50 lire to \$1.00 and the value of said account at the time of filing the claim, when the rate of exchange was 625 lire for \$1.00, resulting in a substantial devaluation of said deposit.

It is well established in international law that a currency reform resulting in the devaluation of a nation's currency is an exercise of sovereign authority which does not give rise to a claim against that nation. This Commission has repeatedly so held. (See claims of *Irene Hill Mascotte*, HUNG-20435; *Walter J. Zuk*, SOV-40492; *Gus G. Vtlsamak*, IT-10128.)

The Commission is of the opinion that any other construction would be unwarranted and contrary to the evident import of the statute which provides for claims against the Government of Italy. While the claimant may have sustained a loss, it is concluded that the loss is not compensable under the Act.

For the foregoing reasons, the claim should be and is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D.C.

December 18, 1957.

Bond claims.—Article 81 of the treaty of peace with Italy provided that prewar contractual obligations of the Government of Italy or its nationals to the Government or nationals of one of the Allied and Associated Powers were in no way impaired by the existence of the state of war. In the Memorandum of Understanding, which included the payment of \$5,000,000.00 for claims “not otherwise provided for,” the Government of Italy recognized the existence of legitimate claims of United States nationals arising out of contractual obligations incurred prior to the outbreak of war, and agreed to make every effort to settle them at an early date.

The instant claim illustrates a denial of a portion of a claim based upon bonds of the Government of Italy, as a type of claim otherwise provided for, and not compensable under Section 304 of the 1949 Act. Another claim, based upon bonds of the Italian Postal Savings Bank, was denied in the same manner. (*Claim of James De Marco*, Claim No. IT-10086, Dec. No. IT-249, 10 FCSC Semiann. Rep. 142 (Jan.-June 1959).)

A claim was asserted by bondholders of an Italian shipping company which owned a vessel seized and vested during the war by the United States Government. Claimants first filed a claim with the Alien Property Custodian which was dismissed because the vested property had been returned to its Italian owners. Claimants thereupon filed a claim with this Commission, which was denied because provision was made under the treaty of peace for claims involving prewar contractual agreements, including bonds. (*Claim of Walter Friedlander, et al.*, Claim No. IT-10425, Dec. No. IT-458, 10 FCSC Semiann. Rep. 152 (Jan.-June 1959).)

Currency reform.—A further portion of the instant claim, based upon Italian lire in a blocked account in an Italian bank which had been reduced in value from an asserted 19.50 lire for \$1.00 at the time of deposit to 625 lire for \$1.00 at the time of filing the claim, was denied on the ground that currency reform resulting in devaluation is an exercise of sovereign authority which does not give rise to a claim against the nation exercising the right. Another claim against Italy was based upon a loan of 300,000 drachmae to the Skopeles Harbor Fund in Skopeles, Greece, in 1938 when assertedly its value was \$3,000.00. Thereafter the drachma became so deflated as to lose its value for all practical purposes, and resulting Greek currency reforms had the effect of extinguishing the debt. The Commission expressed grave doubt that the devaluation of Greek currency had any immediate relationship to Italy's participation in World War II

but, without ruling on that question, denied the claim by finding that regulation of currency is an exercise of sovereign authority, and an internal matter the effects of which may not be attributable to the government of another nation. (*Claim of Gus G. Valsamakis*, Claim No. IT-10128, Dec. No. IT-300.)

Other losses not compensable under Section 304.—The language of Section 304 of the 1949 Act includes claims of United States nationals “against the Government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy.” Although this wording does not specifically limit claims to those for loss or damage caused by Italian action, the references to claims against the Government of Italy and to claims not provided for in the treaty of peace with Italy make clear that it was not intended to include losses caused by the actions of other countries with whom the United States was at war, merely because Italy was engaged in the same war from June 10, 1940 to September 15, 1947. Accordingly, the Commission denied claims where the damage was attributable to German military forces, even though occurring in territory occupied by Italian troops prior to the German military occupation. For example, where a claimant asserted that the loss of his property occurred on January 17, 1944 in Albania, which had been occupied by Italian troops until September 1943, and where the evidence clearly indicated that the damage was caused by German military activities, the claim was denied for the reason that the Commission had no jurisdiction with respect to such losses under Section 304 or any other provision of Title III of the Act. (*Claim of Dimitrios Romanos*, Claim No. IT-10317, Dec. No. IT-255, 10 FCSC Semiann. Rep. 143 (Jan.-June 1959).) Under subsequent legislation, this claimant received an award under the general war claims program of the Commission, discussed herein beginning at page 572. Similarly, a claim based upon damage caused by German action on April 11, 1944 in Karpenision, Greece, was denied. (*Claim of John George Poulos*, Claim No. IT-10395, Dec. No. IT-13-2.)

In another instance, a claim based upon damage caused by Italian action in Gore, Ethiopia, on or about May 3, 1936, was denied because it did not arise out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947. (*Claim of George John Sakellaredis*, Claim No. IT-10228, Dec. No. IT-274, 10 FCSC Semiann. Rep. 144 (Jan.-June 1959).)



CLAIMS AGAINST THE SOVIET GOVERNMENT

SOVIET CLAIMS PROGRAM STATISTICS

Statutory authority: Title III of the International Claims Settlement Act of 1949, 69 Stat. 570 (1955), 22 U.S.C. §§ 1641-1641q (1964), as amended, 72 Stat. 531 (1958), 22 U.S.C. 1641j (1964).

Number of claims: 4,130.

Amount asserted: \$530,233,446.

Number of awards: 1,925.

Amount of awards: Principal, \$70,466,019.

Interest, \$58,592,874.

Amount of fund: \$8,658,722.43.

Program completed: August 9, 1959.

**ESTATE OF M. SERGEY FRIEDE,
DECEASED****Against the Soviet Government**

Claims under Section 305(a)(1), Title III of the 1949 Act based on liens obtained before November 16, 1933 by virtue of judgments or warrants of attachment in favor of nationals of the United States on property covered by Litvinov Assignment allowed only to extent they originally accrued in favor of nationals of the United States. Lien in favor of executors of estate of deceased whose successors as well as deceased were nationals of the United States recognized as "lien obtained by a national of the United States" within meaning of Section 305(a)(1).

Awards under Section 305 increased by interest at rate of 6% per annum from date of loss to November 16, 1933, date of Litvinov Assignment. For the purpose of payment under Section 310(a)(1), the "principal amount" of an award pursuant to Section 305(a)(1) based on a judgment means the aggregate of: (1) value of claim at time it arose; (2) interest at rate of 6% per annum from date claim arose to November 16, 1933; and (3) costs and disbursements included in the judgment.

Award under Section 305(a)(1) may not exceed the proceeds of the property encumbered by the lien.

PROPOSED DECISION

This is a claim by Donald S. Friede, as Administrator, C.T.A., of the Estate of M. Sergey Friede, deceased, for the following:

(a) Judgment dated July 19, 1935 ----- \$1,585,941.27

(Composed of (1) value of claim at time it arose on July 10, 1919 of \$800,000, (2) interest of \$769,199.97 computed at 6% from time claim arose on July 10, 1919 to date of judgment of July 19, 1935, and (3) costs and disbursements of \$16,741.30)

(b) Interest at 6% on judgment of \$1,585,941.27 from date thereof (July 19, 1935) to November 30, 1955 -----

1,937,755.62

Total ----- \$3,523,696.89

Less payments received by claimant on account with interest at 6% to November 30, 1955 -----

124,193.27

Net to November 30, 1955 ----- \$3,399,503.62

(Claimant asks that interest at 6% from November 30, 1955 to date of payment be added to the above figure of \$3,399,503.62)

A certified copy of Letters of Administration which were issued to Donald S. Friede on July 17, 1951 by the Surrogate's Court

of the County of New York, State of New York, has been furnished to the Commission. It is alleged that the claim accrued solely in favor of the decedent, M. Sergey Friede, a citizen of the United States since September 30, 1890, the date of his naturalization by the Court of Common Pleas for the City and County of New York.

It is alleged that the decedent, M. Sergey Friede, and a partnership known as "Mavrikij Nelken" composed of Mavrikij (Maurice) Stifter and Jacques (Jacob) M. Berlin, entered into a joint venture to sell goods and supplies to the Imperial Russian Government during World War I; that the profits of the venture were to be divided equally and that the account of the joint venture was to be kept in the Azof Don Bank in Russia in a dollar account in the name of Mavrikij Nelken; that the venture was successful and substantial profits were realized and deposited in the account so provided; that after the Soviet Revolution it was decided to dissolve the joint venture and divide the profits; that Mavrikij Nelken immediately withdrew its half, leaving a balance of "Seven hundred twenty-three odd thousand dollars" in the Azof Don Bank which, together with interest, left a balance of "approximately Eight hundred thousand dollars;" that of this amount the partnership of Mavrikij Nelken claimed \$21,273.58 by reason of adjustment of interest and commissions; that pursuant to the insistence of M. Sergey Friede, his nephew and representative in Russia Solon O. Friede, Mavrikij (Maurice) Stifter and Jacques (Jacob) M. Berlin, went to the Azof Don Bank and requested Mr. Czamanski, in charge of the Foreign Department of the Bank, to make the necessary arrangements to transfer the account to New York; that Mr. Czamanski informed them that the Azof Don Bank did not have the necessary dollars in New York to make the transfer direct but "would arrange it through the Russo-Asiatic Bank;" thereafter, a conference was had with the Russo-Asiatic Bank at which time Solon O. Friede, Mavrikij Stifter, Jacques M. Berlin and Mr. Czamanski instructed the Russo-Asiatic Bank to transmit the sum of \$800,000 to M. Sergey Friede in New York; that the Russo-Asiatic Bank accepted "the business" and agreed to make the transmittal to its American correspondent, the Guaranty Trust Company; that the transfer was never made and that M. Sergey Friede was never paid.

The evidence of record shows that shortly thereafter, but prior to September 3, 1920, M. Sergey Friede died testate; that his will was admitted to probate on September 3, 1920 in the Surrogate's Court of the County and State of New York; that his widow, Julia L. Friede, a citizen of the United States since her birth on September 17, 1866 at New York, New York, and his son, Sydney

Allan Friede, a citizen of the United States since his birth on May 19, 1890, were each given one-half of the residue of the estate which included this claim; that pursuant to an application by these two individuals as executors of the Estate of M. Sergey Friede, deceased, a warrant of attachment was issued on September 25, 1933 by the Supreme Court of the State of New York on the property of the Russo-Asiatic Bank; that on September 25, 1933 such warrant of attachment was served on the Guaranty Trust Company of New York and the National City Bank, and a levy and attachment was made on all debts, moneys and property belonging to the defendant, Russo-Asiatic Bank, in the possession of such Banks; that on July 19, 1935 a default judgment was rendered by the Supreme Court in Richmond County, State of New York, in favor of Julia L. Friede, as executrix, and Sydney Allan Friede, as executor, of the Estate of M. Sergey Friede, deceased, against the defendant, Russo-Asiatic Bank, for the sum of "Eight hundred thousand (800,000) dollars, with interest thereon from the 10th day of July 1919 to the date hereof [July 19, 1935], amounting to the sum of Seven hundred sixty-nine thousand one hundred ninety-nine and 97/100 (769,199.97) dollars, together with \$16,741.30 costs and disbursements as taxed, amount in all to the sum of \$1,585,941.27. . . ."

On February 18, 1934, which was prior to the issuance of the above judgment, Sydney A. Friede died testate. A certified copy of the decedent's will, admitted to probate on March 19, 1954 by the Surrogate's Court in and for the County and State of New York, shows that by the residuary clause a trust was created with Donald S. Friede, a citizen of the United States since his birth on May 12, 1901 in New York, New York, being the life tenant and the remainder to his children. The evidence of record shows that the life tenant has two children—Anne Friede born on August 15, 1943 in Pasadena, California and Mary Friede born on March 12, 1946 in Pasadena, California. On February 8, 1950, Julia L. Friede died testate and her will was admitted to probate on February 14, 1950. Her son, Donald S. Friede, was the sole residuary legatee.

In the circumstances, this claim presents five questions which will be discussed in series hereafter.

I. *Whether this claim originally accrued solely in favor of the decedent, M. Sergey Friede, as alleged.*

Section 305(a) (1) of Public Law 285, 84th Congress, confers jurisdiction upon this Commission over "claims of nationals of the United States against a Russian national *originally accruing in favor of a national of the United States* with respect to which a judgment was entered in, or a warrant of attachment issued

from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. . . ." (Emphasis supplied.)

The fiduciary must sustain the burden of proving, *inter alia*, that the claim originally accrued in favor of M. Sergey Friede. With regard thereto he made those allegations stated above and as evidence in support thereof, filed the following:

- (1) Deposition of Solon O. Friede, dated July 19, 1935, taken before a Justice of the Supreme Court of the State of New York, County of Kings, wherein he swears that he was the nephew of M. Sergey Friede and was manager of M. Sergey Friede's office in St. Petersburg, subsequently named Petrograd, now called Leningrad, Russia from 1915 to the time the office closed in 1918; that all moneys received in the business were deposited in the name of Mavrikij Nelken in the Azof Don Bank; that in December of 1917 there was over \$700,000, excluding interest, in the dollar account in that bank; that "Mr. M. Sergey Friede told me that due to the unsettled conditions then prevailing . . . he was anxious to have the balance then standing in the Azof Don Bank transmitted to New York, and that he had instructed Mavrikij Nelken to get the dollar balance over to New York. . . . I stated to Mr. Berlin and Mr. Stifter that Mr. Friede wanted this money transmitted to New York because of conditions then prevailing in Russia. They stated that the money should be so transmitted to him in New York and that they were just as anxious as Mr. Friede to have it done;" that thereafter Mr. Czamanski of the Azof Don Bank went with the affiant and Messrs. Berlin and Stifter to the Russo-Asiatic Bank to make the necessary arrangements to transfer the account to New York; that "Mr. Czamanski of the Azof Don Bank said that Mr. M. Sergey Friede and Messrs. Berlin and Stifter carried a large dollar account with the Azof Don Bank and that they desired to transmit that dollar account to Mr. M. Sergey Friede in New York City. He said the amount would be \$800,000 to cover principal and interest;" that the necessary arrangements were made and that the affiant saw the confirmation "which

Azof Don Bank had received from the Russo-Asiatic Bank, which confirmation advised that the Guaranty Trust Company of New York had been instructed by the Russo-Asiatic Bank to forward to the National City Bank of New York the sum of \$800,000."

- (2) Affidavit of George Stifter, of April 19, 1956, sworn to before the Vice-Consul of the United States at Paris, France, who swears that he is the son of Mavrikij V. Stifter who died in 1953 and who was the surviving partner of the firm of Mavrikij Nelken, the other partner being Jacques M. Berlin who died many years before; that Mavrikij Nelken withdrew from the Azof Don Bank its share of the profits except certain bank interest and commissions allegedly due them; that Mr. Friede requested that the balance remaining be sent to him in New York; that "all of this money was to be paid to M. Sergey Friede and belonged to him, and Mavrikij Nelken had no claim on any of it, having theretofore . . . obtained its share of the profits of the venture . . . ;" and that "my father always said that the firm of Mavrikij Nelken had no interest in the aforesaid eight hundred thousand dollars other than the controversy aforesaid. . . ."
- (3) The affidavit of Constantin Stifter, dated April 19, 1955 and sworn to before the Vice-Consul of the United States in Paris, France, who swears that he was the attorney and legal advisor to his father in liquidating the affairs of Mavrikij Nelken and was familiar "with the affairs of that concern;" that he has read the affidavit of George Stifter, *supra*; and that "the allegations of the aforesaid affidavit and deposition are true and correct."
- (4) The affidavit of April 24, 1956 by Samson Selig, Esquire, who swears that he is now and has been "since its inception . . . the attorney of record in the action brought in 1933 by Julia L. Friede and Sydney Allan Friede, as Executrix and Executor of M. Sergey Friede against the Russo-Asiatic Bank, and the members of the firm of Mavrikij Nelken . . . ;" that throughout that time he had many conferences with Julia L. Friede and Sydney A. Friede, and had numerous conferences in Paris with Mavrikij V. Stifter, the surviving partner of Mavrikij Nelken. The affidavit further recites statements made to Mr. Selig by Sydney A. Friede which statements, in effect, corroborate the statements made in the affidavits named above.

A certified copy of the complaint filed in the action by the Estate of M. Sergey Friede against the "Russo-Asiatic Bank, also known as Banque Russo Asiatique, and Maurice Stifter and Jacob Moisyvitch Berlin, co-partners doing business under the firm name of Mavrikij Nelken," which resulted in the judgment in favor of the plaintiff, *supra*, contains the following allegations which are also pertinent to the question as to whether the original claim arose solely in favor of M. Sergey Friede:

FOURTH: That at all the times hereinafter mentioned *the . . . Azoff Don Bank . . . was indebted to the plaintiff's decedent and the firm of Mavrikij Nelken . . . in the sum of Seven hundred twenty-seven thousand, nine hundred twenty-three and 99/100 (727,923.99) dollars and accrued interest, which amount plaintiff's decedent and the firm of Mavrikij Nelken had demanded of the Azoff Don Bank to be made available to them in New York. In order to comply with the said demand, and on the instructions of the plaintiff's decedent and Mavrikij Nelken, the said Azoff Don Bank entered into an agreement with the defendant . . . wherein and whereby said Russo-Asiatic Bank undertook and agreed to pay to the said Azoff Don Bank, in the City of New York, the sum of Eight hundred thousand (800,000) dollars. . . .*

FIFTH: *That in making the said agreement, the said Azoff Don Bank acted as the agent for plaintiff's decedent, M. Sergey Friede, and the said firm of Mavrikij Nelken.*

NINTH: *That the said sum of Eight hundred thousand (800,000) dollars was to be paid to the said Azoff Don Bank in the City of New York for the benefit and account of the said plaintiff's decedent, M. Sergey Friede, and the said firm of Mavrikij Nelken.*

TENTH: That the defendants, Maurice Stifter and Jacob Moisyvitch Berlin, co-partners doing business under the firm name of Mavrikij Nelken, are joined as defendants in this action *because these plaintiffs have been unable to join them herein as co-plaintiffs. . . .* (Emphasis supplied.)

It is the contention of the claimant that the original cause of action arose when the above contract was breached by the Russo-Asiatic Bank. It is alleged that M. Sergey Friede was a donee or creditor beneficiary under the terms of the contract. In support of this contention it is implied that the court which rendered the judgment in favor of the Estate of M. Sergey Friede answered this question in the affirmative and thereby bound the Commission to accept it in accordance with the provisions of Section 305(b) of Public Law 285, 84th Congress. The Commission rejects this argument. Furthermore, the affidavit of July 11, 1932 by Maurice Stifter, also known as Mavrikij Valentinovitch Stifter,

contains statements to the effect that the money to be transferred to New York by the Russo-Asiatic Bank was for the benefit of M. Sergey Friede and the firm of Mavrikij Nelken.

If the claim did originally accrue in favor of M. Sergey Friede, the Commission is at a loss to understand why the firm of Mavrikij Nelken was joined as a party defendant in the complaint filed which resulted in the judgment against the Russo-Asiatic Bank if that firm had no interest in the original claim. The Tenth item of the complaint states:

That the defendants, Maurice Stifter and Jacob Moisyvitch Berlin, co-partners doing business under the firm name of Mavrikij Nelken, are joined as defendants in this action because these plaintiffs have been unable to join them herein as co-plaintiffs.

The attorney for the claimant states in his affidavit that:

... The reasons for making the members of the firm of Mavrikij Nelken defendants were entirely procedural. The Estate of M. Sergey Friede did not wish to conduct a long and arduous litigation against the Russo Asiatic Bank, emerge successful therefrom and then have to face and defend a suit brought by Mavrikij Nelken to recover the \$21,273.58, which would involve not only great additional expense, but several years additional delay.

Another reason for adding them as defendants was to forestall any possible motion on the part of the Russo Asiatic Bank to dismiss the complaint for lack of necessary parties. I had had conferences with the General Counsel for the Russo Asiatic Bank in Paris, from which, as well as from conferences with counsel for the Russo Asiatic Bank in New York, I realized that though the Russo Asiatic Bank could not defend upon the merits, they would take advantage of every delaying tactic and every motion that could be addressed to the pleadings, and though I was confident that such a motion would be unsuccessful, I wished to avoid the delay and burden that such a motion to dismiss would entail.

If M. Sergey Friede was a third party beneficiary under the contract, *supra*, as alleged, for the full amount of the money involved (\$800,000), it would not be necessary to join Mavrikij Nelken as party plaintiffs or defendants because they would have no interest in the matter. It is concluded that Mr. Friede was not a third party beneficiary for the amount involved and that he had a partial interest therein in conjunction with the firm of Mavrikij Nelken.

In the circumstances, the Commission must determine whether the above-entitled claim arose solely in favor of M. Sergey Friede, or in favor of M. Sergey Friede and Mavrikij Nelken. Such de-

termination must, of course, be based upon the record. In accordance with the Commission's regulation (531.6(d)) the claimant must sustain the burden of proving that the claim arose solely in favor of M. Sergey Friede, as alleged.

In view of the foregoing evidence and facts, the Commission finds that the claimant has not sustained the burden of proving that the claim originally accrued solely in favor of M. Sergey Friede.

However, the evidence of record establishes that the decedent had a one-half interest in the claim at the time of accrual. This conclusion is based upon the above evidence and the testimony and evidence filed in the suit brought by M. Sergey Friede against the Azousko Donskoi Kemmercheski Bank, otherwise known as Banque de Commerce de L'Azoff Don and Jacob Moisyvitch Berlin and Mavrikij J. Stifter in the New York Supreme Court, New York County, New York (New York County Clerk's No. 26585-1919) and the printed record on appeal in the suit by Julia L. Friede, as Executrix and Sydney A. Friede, as Executor under the Last Will and Testament of M. Sergey Friede, Deceased, Plaintiffs-Respondents and Appellants, against the Russo-Asiatic Bank, Defendant-Appellant and Respondent, and Maurice Stifter and Jacob Moisyvitch Berlin, co-partners doing business under the firm name of Mavrikij Nelken, Defendants. Our conclusion is also based upon an Order entered on February 9, 1923 assessing a transfer tax in the Estate of Marcus Sergey Friede, and the record in the transfer tax proceedings. In those proceedings Julia L. Friede, Executrix and Sydney Allan Friede, Executor of the above Estate, filed schedules with the Transfer Tax Department of the State of New York on October 17, 1921. Their affidavit, sworn to on September 23, 1921 and attached to the schedules, states (Schedule A 3, Item 10) :

Actions: At the time of the death of the decedent, said decedent was the plaintiff in two certain actions in which the decedent had a one-half interest, one action against the White Company. . . .

The other action against the Azoff Don Bank of Petrograd, Russia pending in the New York Supreme Court, New York County, to recover the sum of \$723,000.00 which action is still undetermined.

It is apparent from the record that the actions against the Azof Don Bank in 1919 and the Russo-Asiatic Bank in 1933 are based upon the same transactions for which this claim is filed.

In the circumstances, it is concluded that the decedent, Marcus Sergey Friede, had a one-half interest in the claim at the time of accrual and not the sole interest as claimed.

II. *Whether a lien was obtained by a national of the United States prior to November 16, 1933 upon any property in the United States which has been taken, collected, recovered or liquidated by the Government of the United States pursuant to the Litvinov Assignment.*

The record of this claim shows that on September 25, 1933, the Supreme Court of Richmond County, New York, issued a warrant of attachment in favor of the claimants against the assets of the Russo-Asiatic Bank; that on September 25, 1933 the Sheriff levied upon the property of the Russo-Asiatic Bank in the possession of the National City Bank in New York and the Guaranty Trust Company in New York; that on September 27, 1933, Julia L. Friede, as Executrix, and Sydney Allan Friede, as Executor, under the Last Will and Testament of M. Sergey Friede, filed a complaint and summons, by their attorney Samson Selig, against the Russo-Asiatic Bank and Mavrikij Nelken in the Supreme Court of Richmond County, State of New York; and that service of summons on the defendant was begun by publication on October 24, 1933.

In view of the foregoing, the Commission finds that a lien was obtained by claimant on the assets of the Russo-Asiatic Bank in the possession of the National City Bank and the Guaranty Trust Company prior to November 16, 1933, the date of the Litvinov Assignment.

Since the original owner of the claim, M. Sergey Friede, was a national of the United States at the time the claim arose, and since all successors in interest thereto were nationals of the United States, the Commission also finds that claimant has sustained the burden of proving the necessary nationality requirements under Section 305(a) (1) of the law conferring jurisdiction upon this Commission.

The records of the Departments of Justice and Treasury and of this Commission show that at least \$3,401,414.18 of the assets of the Russo-Asiatic Bank were taken, collected, recovered or liquidated by the Government of the United States pursuant to the Litvinov Assignment.

In the circumstances, it is concluded that claimant has met all necessary requirements under Section 305(a) (1) of Public Law 285, 84th Congress, and accordingly, is entitled to an award.

III. *What constitutes the principal amount of an award made pursuant to Section 305(a) (1) of Public Law 285, 84th Congress?*

Section 310(a) (1) provides that where the Commission has certified an award made pursuant to Section 305(a) (1) the Secretary of the Treasury shall make payment in full of the principal amount of such award. Section 310(a) (5) provides that after

payment has been made in full of the principal amounts of all awards from any one fund, pro rata payments shall be made from the remainder of such fund then available for distribution on account of accrued interest on such awards as bear interest.

As the Soviet Claims Fund created by Section 302 contains only \$9,114,444.66, which, obviously, will not be ample to pay the principal amounts of all awards made pursuant to Section 305 (a) (1) and (2), it is of the utmost importance that the Commission clearly define the phrase "principal amount of the award."

There is no difficulty in construing the phrase "principal amount of the award" as it applies to awards made pursuant to Section 305(a) (2) which includes "(a) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government." For example, the "principal amount of the award" would be the value of the property at the time of its nationalization or confiscation by the foreign government. The award in such a case would be composed of two distinct and separate items, as follows:

- (1) The principal amount of the award
plus
- (2) Interest from the date of such nationalization or confiscation of the property to the date of payment by the foreign government. (The question of interest will be discussed later in this Decision.)

Construction of the phrase "principal amount of the award" as applied to awards made pursuant to Section 305(a) (1)—so-called "lien claims"—is most difficult and most important to all claimants. The Commission has not found a definition of the phrase in the legislative history of the law or even a direct discussion thereof.

There are two distinct principles or methods which we may follow in ascertaining the "principal amount of the award" of a "lien claim." These are based upon conflicting theories and are certainly susceptible to sound pros and cons, as hereinafter discussed.

It may be argued that the phrase refers to the value of the claim at its inception. It may be said that Congress intended that the greatest possible equity be accorded to all claimants within the purview of Section 305. Since the domestic law of the United States, as well as international law, require the payment of "just compensation," it may be assumed that the Congress intended that the Commission award "just compensation" to all claimants. What, then, does "just compensation" mean? It is well settled by the decisions of the Supreme Court that "just compensation"

is the value of the property at the time of its taking. The fact must not be overlooked that even under this theory, priority will be given to the processing of "lien claims" by Section 305(c) and to payment of the "principal amount of the award" by Section 310(a)(1).

The other theory as to the meaning of the phrase is that it includes the following items:

- (1) The value of the claim when it arose.
- (2) Interest from the time the claim arose to the date of the Litvinov Assignment.
- (3) Costs and disbursements.

The latter theory may be supported by the argument that the "principal amount of the award" in a "lien claim" necessarily means the total amount of the judgment which includes the above three items. As to this specific argument, consideration must necessarily be given to Section 305(b), which provides:

Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

In support of this argument, an analogy may be drawn to a bankruptcy proceeding in the United States where a judgment creditor receives payment in full (principal plus interest) before a general creditor participates in the fund. In the opinion of this Commission, the most compelling argument which can be made in support of the latter theory is that in the absence of the Litvinov Assignment the various individuals who had liens and judgments against Russian nationals would have recovered the entire amount of the judgment (principal, interest and costs) against such national before any general creditor would have participated. That Congress realized this and intended to place these lien creditors in the status they enjoyed immediately prior to the Litvinov Assignment is confirmed by the following quotation from page 6 of the Report of the Committee on Foreign Relations of the Senate on H. R. 6382:

This preferential treatment is justified by the following considerations: A number of nationals of the United States, having pursued their claims against Russian nationals in United States courts, or in State courts, obtained liens against specific assets, and to that extent acquired a property interest therein. These assets then became the subject of the Litvinov Assignment and were transferred to the Federal Government. Lien claimants, it was felt, were entitled to a priority in the payment of

their claims over other claims against the Soviet Government which had not attained a comparable legal status. . . .

In view of the foregoing, the Commission is of the opinion that the phrase "principal amount of the award" as applied to an award under Section 305(a) (1) should be construed to mean the total of the following items:

- (1) The value of the claim when it arose.
- (2) Interest from the time the claim arose to the date of the Litvinov Assignment.
- (3) Costs and disbursements.

IV. *Since interest is included in the principal amount of the award, what date should be used as a termination date in the calculation thereof?*

As was stated prior hereto, the Commission is of the opinion that interest should be included in the principal amount of an award made pursuant to Section 305(a) (1).

The amount claimed includes interest from the time the claim arose in 1919 to the date of actual payment.

The Commission does not agree that interest should be allowed subsequent to the issuance of the judgment against the Russo-Asiatic Bank, nor that interest should be allowed for the period stated in the judgment (from July 10, 1919 to July 19, 1935). Although there is uniformity as to the date from which interest is to be computed, there is no settled rule under international law as to the date of termination. However, this Commission, in the *Claim of Joseph Senser*, Decision No. 663, under the Yugoslav Claims Agreement of 1948, allowed interest on awards from the date the claim arose to the date of payment by the Yugoslav Government, the theory being that since claimant did not receive prompt and adequate payment on the date the claim arose he was entitled to compensation for the loss of the use of such money in terms of interest to the date of payment.

Under domestic law, interest is also allowed on the ground that the debtor is in default and has used the creditors' money. Such interest is computed to the time the debt is paid. There is no question that interest, in the instant claim began running from July 10, 1919, as specified in the judgment. The date of termination of such interest is determined to be November 16, 1933, the date the Soviet Government assigned to the United States the assets which now constitute the fund from which claimant will be paid. Although such assignment did not involve actual cash, it did comprise assets of the Soviet Government in the United States which the United States Government eventually reduced to cash. Such assignment of assets constituted a payment from

which the claimant's full award is realized and an estoppel to further interest. The fact that the judgment specifically provides for interest from July 10, 1919 to July 19, 1935 does not bind the Commission to allow interest for such period. Section 305(b) of the Act is specifically limited to those *issues* which were determined by the court. The period for which the interest was to run was not an *issue* determined by the court. The allowance of interest to the damages flowing from a breach of contract is mandatory under Section 480 of the New York Civil Practice Act. *Hart v. United Artists Corp.*, 252 App. Div. 133, 298 N.Y.S. 1 (1937).

Accordingly, interest is allowed for the period July 10, 1919 to November 16, 1933.

V. Must the Commission's awards on claims within the purview of Section 305(a)(1) of Public Law 285, 84th Congress, be made with due regard to the amount of the proceeds of the property against which the lien was obtained and the number of liens against such property?

Section 305(a)(1) provides, in part, as follows:

Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds.

Section 308 of the aforesaid law provides:

The Commission shall as soon as possible, and in the order of making of such awards, certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

Section 310 of the aforesaid law provides:

(a) The Secretary of the Treasury shall make payments on account of awards certified by the Commission pursuant to this title as follows:

(1) Payment in full of the principal amount of each award made pursuant to . . .

* * *

(c) For the purposes of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant and payable from the same fund.

(d) With respect to any claim which, at the time of the award, is vested in persons other than the person to whom the claim originally accrued, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein. . . .

In view of the foregoing, it is clear that this Commission cannot make an award under Section 305(a)(1) on any "lien claim" which is in excess of the proceeds of the property as may have been subject to the lien of the judgment or attachment nor can the award exceed an amount equal to the proportion which such claim bears to the total amount of such proceeds where the proceeds are less than the aggregate amount of all valid claims so related to the same property.

Since it is proposed to allow this claim for one-half of the principal amount specified in the judgment, *supra*, or \$400,000 ($\frac{1}{2} \times 800,000$) plus costs and disbursements in the amount of \$16,741.30 and interest on the principal amount at the rate of 6% per annum from July 10, 1919, the date the claim arose, to November 16, 1933, the date of the Litvinov Assignment, in the amount of \$344,745.20, and since the total of the remaining claims against the so-called Soviet Claims Fund will not exceed such fund available for payment to claimants under Section 305(a)(1), the Commission concludes that the amount awarded herein shall be certified to the Secretary of the Treasury for full payment.

AWARD

On the above evidence and grounds, this claim is allowed to the extent indicated above and an award is hereby made to the Estate of Marcus Sergey Friede, deceased, in the amount of \$761,486.50.

Dated at Washington, D.C.

July 20, 1956.

Lien claims accruing in favor of United States nationals.—Claims against the Soviet Union under Section 305 of the 1949 Act included two general classes: Section 305(a)(1) claims which accrued originally in favor of United States nationals against Russian nationals and with respect to which United States nationals had obtained judgments or warrants of attachment, prior to November 16, 1933, on property in the United States taken over by the United States Government under the Litvinov Assignment of November 16, 1933 (Department of State Publication 528; European and British Commonwealth Series 2 (new series); Eastern European Series, No. 1 (old series)); and Section 305(a)(2) claims of nationals of the United States against the Soviet Government arising prior to November 16, 1933.

The *Friede* decision provides an example of a claim under Section 305(a)(1). The Commission found that one-half of the claim had accrued originally to a national of the United States,

since deceased, and that his successors, also nationals of the United States, had obtained a lien before November 16, 1933 on property of the debtor in the United States, taken over by the United States Government under the Litvinov Assignment. Accordingly, claimant was entitled to an award based upon one-half of the original claim. The other one-half, which had accrued originally to persons who were not nationals of the United States, was denied.

In another claim, where claimant was a United States national and had secured a warrant of attachment against property in the United States belonging to a Russian bank, the claim was denied because claimant was the assignee of the original creditor of the bank, and had failed to establish that the assignor was a United States national, so that the Commission was unable to find that the claim originally accrued in favor of a national of the United States as required in Section 305(a)(1). (*Claim of James A. Tillman, Deceased*, Claim No. SOV-40783, Dec. No. SOV-5.)

Where a claimant was a United States national to whom the claim originally had accrued, but assigned the claim to a British national who secured a judgment against the Russian debtor and then reassigned his interest to claimant, the claim was denied on the ground that the judgment or warrant of attachment was not issued in favor of a national of the United States, as required by Section 305(a)(1). Claimant contended that at all times it held the full beneficial, equitable title to the claim and the judgment, and that the assignment, though unconditional in form, was for collection only, the interest of the British national being only that of a trustee. The Commission affirmed its denial of the claim, however, finding the terms of the statute to be unambiguous, and not fulfilled by a claimant who, though a United States national, was not a party to the attachment, the judgment or the lien. (*Claim of the First National City Bank of New York*, Claim No. SOV-41261, Dec. No. SOV-8, 10 FCSC Semiann. Rep. 178 (Jan.-June 1959).)

In a somewhat different situation, a Russian bank collected the amounts due on certain drafts but refused to pay the proceeds to the transferees, who then invoked their rights against a partnership under its endorsement of the drafts. The partnership, comprising the American claimant and a national of Guatemala, fulfilled its obligation by paying the transferees, who thereupon assigned their claims to the Guatemalan partner, rather than to the partnership. He filed suit and obtained a warrant of attachment against property of the bank in the United States, and on December 17, 1917 executed an assignment to claimant of one-half of the proceeds. The partnership was dissolved in 1919, and the matter was never prosecuted to judgment. The Commission denied the claim under Section 305(a)(1) of the Act, finding that the warrant of attachment was not issued in favor of a national of the United States and that any lien which resulted was not obtained by a national of the United States. Subsequently, the same claim was allowed under Section 305(a)(2) of the Act, as a claim of a United States national against the Soviet Government arising prior to November 16, 1933. On December 27, 1917, after the assignment to claimant, the Soviet Government

nationalized all Russian banks, and on March 4, 1919 issued a decree annulling all obligations of nationalized enterprises which arose prior to nationalization. Thus creditors of the banks were barred from enforcing their legal rights, and the Commission found that these actions of the Soviet Government constituted a confiscation of property giving rise to claims against that Government by the creditors. (*Claim of John D. Williams*, Claim No. SOV-40092, Dec. No. SOV-4, 10 FCSC Semiann. Rep. 203 (Jan.-June 1959).) The result, however, was less favorable to claimant than would have been an award under Section 305(a) (1), carrying with it a preference as to payment, as discussed below.

Interest.—A particular problem was posed with respect to interest in connection with awards under Section 305 of the Act in view of priorities for payment established by Section 310. Under this section, the Secretary of the Treasury was directed to make payment in full of the principal amount of each award pursuant to Section 305(a) (1), whereas awards under Section 305(a) (2) were to have the principal amount paid in full only where they were for \$1,000.00 or less. Recipients of higher awards under Section 305(a) (2) were to receive initial payments of \$1,000.00 on account of the principal amount, with later payments to be prorated among awardees to the limit of available funds. Similar pro rata payments on account of interest could be made only after the principal amounts of all awards had been paid in full.

In the *Friede* claim, the Commission recognized that the difference in payment provisions for the two classes of claims under Section 305 made it necessary to define "principal amount of the award." The Commission held that as to awards under Section 305(a) (2), the term clearly embraced only the value of the property at the time of its loss. Hence, such awards would contain two separate elements: (1) the principal amount of the award, and (2) interest thereon at 6% per annum from the date of loss to November 16, 1933, the date of the assignment to the United States of the assets constituting the fund from which payments were to be made. (For a general discussion of entitlement to interest on awards, see the annotations to *Claim of Joseph Senser*, appearing at page 152.)

With respect to awards under Section 305(a) (1), on the other hand, the Commission held that the "principal amount of the award," to the full payment of which awardees were entitled under Section 310, included the value of the claim when it arose, plus interest from the time it arose to November 16, 1933, plus costs and disbursements; i.e., the total amount of the underlying judgment which would include those elements. The Commission reasoned that the intention of Congress in providing for preference in payment of awards had been to place lien creditors in the status they had enjoyed immediately prior to the Litvinov Assignment, and had acquired through pursuit of available legal remedies. Accordingly, the award is stated in the *Friede* decision as a single sum, not divided into principal and interest, although it includes interest from the date of loss to November 16, 1933. In its decision the Commission noted that the judgment against the Russian bank had included interest from July 10, 1919 to July 19, 1935, but in its own calculation of the award included

interest only to November 16, 1933 in line with its decision regarding entitlement to interest generally. This was done despite the provision of Section 305(b) to the effect that any judgment of a court of the United States or any State thereof should be binding upon the Commission in determining lien claims under Section 305(a)(1), on "any issue which was determined by the court in which the judgment was entered." Inasmuch as the allowance of interest on damages flowing from breach of contract was mandatory under the New York Civil Practice Act, the Commission considered that the period for which the interest was to run was not an issue determined by the New York court in rendering the judgment forming the basis of the *Friede* claim, and therefore the judgment was not binding upon the Commission in that respect.

Limitation of award under Section 305(a)(1) to the proceeds of the property encumbered by the lien.—Section 305(a)(1) provided further that awards under that paragraph should not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds.

An application of this provision is also illustrated in the *Friede* claim. The warrant of attachment was obtained by the claimant on assets owned by the Russo-Asiatic Bank of approximately \$3,401,414.18 deposited with the National City Bank of New York and the Guaranty Trust Company of New York; the proposed award was in the amount of \$761,486.50; the record before the Commission indicated that the total of the remaining claims against the so-called Soviet Claims Fund would not exceed such fund available for the payment to claimants under Section 305(a)(1); consequently, the Commission concluded that the amount awarded was less than the aggregate amount of all valid preferred claims related to the fund and, therefore, the award was certified to the Secretary of the Treasury for full payment.

In the Matter of the Claim of

Claim No. SOV-40740
Decision No. SOV-2510

JULES M. PAVITT

Against the Soviet Government

Nationality prerequisites satisfied under Section 305(a)(2), Title III, of the 1949 Act if claim was owned by a United States national on date of loss and continuously thereafter. Pursuant to Section 311(b), as amended by Public Law 85-604 of August 8, 1958, claim based on stock interest in nationalized Russian corporation recognized without regard to per centum of ownership

vested in United States nationals on date of loss. Claim for additional stock interests acquired after nationalization denied because claimant failed to establish that nationality prerequisites had been satisfied.

Award under Section 305(a)(2) for stock interest in nationalized Russian corporation measured by value of interest on date of nationalization. Value of stock interest determined on basis of all available financial data, including stock market quotations on date of nationalization.

Supplemental award granted under Commission procedures if previous award was certified to and acted upon by the Treasury Department.

PROPOSED DECISION

This claim for \$46,604.85 under Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, is based upon a loss allegedly sustained when the Soviet Government nationalized several companies in which the claimant owned shares of stock and confiscated a bank account of the claimant.

The burden of proving a claim is on the claimant. Although he has been afforded several opportunities to adduce evidence in support of his ownership of the aforesaid shares of stock, he has not done so. His attorney has informed the Commission that it is impossible for the claimant to obtain evidence to meet the requirement of 25% ownership of the outstanding capital stock of these corporations by individual United States nationals at the time of their nationalization by the Soviet Government as required by Section 311(b) of the aforesaid Act and the Commission has no such evidence which would assist him in meeting this prerequisite. This part of the claim based upon shares of stock must be denied.

As to the bank account, the Commission finds that the claimant, a citizen of the United States since his naturalization on December 24, 1902, had account No. 6774 in the Moscow Branch of the Russo-Asiatic Bank with a balance of 57,515.94 rubles when it was confiscated by the Soviet Government on December 28, 1917; that the exchange rate of the ruble on December 28, 1917 was thirteen cents for one ruble; and that the claimant is entitled to an award based upon 57,515.94 rubles converted to United States dollars at the said exchange rate, and for interest from December 28, 1917 until November 16, 1933, the date of the Litvinov Assignment.

AWARD

On the above evidence and grounds, that part of the claim based upon the bank account is allowed and an award is hereby made to JULES M. PAVITT, claimant herein, in the amount

of seven thousand four hundred seventy-seven dollars and seven cents (\$7,477.07) plus interest thereon at the rate of 6% per annum from December 28, 1917 to November 16, 1933 in the amount of seven thousand one hundred twenty-five dollars and sixty-five cents (\$7,125.65). No determination is made with respect to interest from any period subsequent to November 16, 1933.

Payment of the award herein shall not be construed to have divested claimant herein or the Government of the United States on his behalf, of any rights against the Government of the Soviet Union, for the unpaid balance, if any, of the claim.

Dated at Washington, D.C.

April 2, 1958.

One Commissioner dissents from the proposed award recommended upon the grounds that, under established practices in settlement of international claims, bank accounts are not a proper subject of espousal and as such should not be considered here by the Commission.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on April 2, 1958, a copy of which was duly served upon the claimant. No objections or request for a hearing having been filed within twenty days after such service and general notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Proposed Decision be and the same is hereby entered as the Final Decision on this claim, and it is further

ORDERED that the award granted pursuant thereto be certified to the Secretary of the Treasury.

Dated at Washington, D.C.

May 21, 1958.

SUPPLEMENTAL PROPOSED DECISION

By its Proposed Decision of April 2, 1958 the Commission made an award on that part of this claim based upon a bank account and denied that part predicated upon shares of stock in several Russian companies which had been nationalized by the Soviet Government. The Final Decision dated May 21, 1958 affirmed the Proposed Decision.

That item of the claim based upon such shares of stock was denied for the claimant was unable to prove that at least 25% of the outstanding capital stock of the issuing companies was owned by individual United States nationals at the time they

were nationalized by the Soviet Government as required by Section 311(b) of the International Claims Settlement Act of 1949, as amended.

By Public Law 85-604 of August 8, 1958, the aforesaid 25% requirement was eliminated in those claims based upon direct stock ownership in Russian corporations which were nationalized. The claimant has requested the Commission to reconsider that part of his claim based upon shares of stock.

Under Section 305(a) (2) of the Act, and under well-established principles of international law relating to claims espoused by the United States against other governments, eligibility for compensation requires, among other things, that the property which is the subject of the loss must have been owned by a United States national at the time of such loss and that the claim arising therefrom must have been continuously owned thereafter by a United States national.

This item of the claim is based upon an interest of the claimant as a participant in a joint account, or venture, composed solely of shares of stock in four Russian companies, and as the sole owner of shares in another Russian company. The claimant has stated that his interest in such account, or venture, was increased from $\frac{1}{7}$ to $\frac{1}{4}$ in August 1918 but that such transaction was not reduced to writing. It makes no difference whether this transaction can be proved or not for it occurred after the Russian companies were nationalized; therefore, a claim for such interest (increase from $\frac{1}{7}$ to $\frac{1}{4}$) would apparently not have arisen in favor of a United States national or nationals as required to come within the purview of Section 305(a) (2) of the Act. (See paragraph immediately preceding.)

As to the account or joint venture, the Commission finds that the claimant had a $\frac{1}{7}$ interest in the following-described shares of stock when the issuing companies were nationalized by the Soviet Government:

| Name of issuing company | Number of shares owned by venture | Date of national- ization of company | Market value in rubles per share on date of national- ization | Total market value in rubles of shares owned by venture |
|--|--|---|--|---|
| P. V. Baranovski Mechanical, Cartridge and Pipe Co. ----- | 300 | June 28, 1918 | ¹ 175 | 52,500 |
| Taganrog Metallurgical Co. ---- | 250 | June 28, 1918 | ¹ 230 | 57,500 |

¹ Stock market quotation as of Oct. 21, 1917.

| Name of issuing company | Number of shares owned by venture | Date of national- ization of company | Market value in rubles per share on date of national- ization | Total market value in rubles of shares owned by venture |
|--|--|---|--|---|
| Kolchugin Sheet & Brass Products Co. ----- | 100 | June 28, 1918 | ¹ 568 | 56,800 |
| I. V. Yunker Commercial Bank --- | 133 | Dec. 27, 1917 | (²) | 98,365 |
| Total ----- | 783 | ----- | ----- | 265,165 |

¹ Stock market quotation as of Oct. 21, 1917.

² Used purchase price in June 1917 as only market price at end of 1916 is available.

Evidence before the Commission shows that as of June 22, 1917 the account, or venture, was composed of shares of stock which had been purchased for 334,027.82 rubles, but only 102,875 rubles of the venture had actually been invested, with the certificates for such shares being deposited as collateral for a loan of the balance of the purchase price of 231,152.82 rubles. The net value (cost less loans) of these various shares of stock is shown below:

(1) *Net Value of Shares Issued by Three Russian Companies:*

| Name of Company | Market value in rubles of shares on June 28, 1918 |
|--|---|
| P. V. Baranovski ----- | 52,500 |
| Taganrog ----- | 57,500 |
| Kolchugin ----- | 56,800 |
| Total ----- | 166,800 |
| Less: Loans applicable to above shares ----- | 162,297 |
| Net value to Venture ----- | 4,503 |

(2) *Net Value of I. V. Yunker stock:*

| | |
|--|--------|
| Market value on Dec. 27, 1917 ----- | 98,365 |
| Less: Loans thereon ----- | 68,855 |
| Net value to Venture ----- | 29,510 |
| Total net value in rubles to Venture ----- | 34,013 |

The Commission also finds that the claimant was the sole owner of 30 shares of stock of Bryansk Coal Mining Company when it was nationalized on June 28, 1918 and that such shares had a value on that date of 10,025 rubles.

On the basis of the foregoing, the following-described addition will be made to the principal amount of the award set out in the Proposed Decision of April 2, 1958:

| Date claim arose | Claimant's interest | Value of ruble when claim arose (cents) | Value in U.S. dollars |
|---------------------|----------------------------------|---|-----------------------|
| June 28, 1918 ----- | 643 ($\frac{1}{7}$ of 4,503) | 14 | 90.02 |
| Dec. 27, 1917 ----- | 4,216 ($\frac{1}{7}$ of 29,510) | 13 | 548.08 |
| June 28, 1918 ----- | 10,025 | 14 | 1,403.50 |
| Total ----- | 14,884 | ----- | 2,014.60 |

The Commission finds, therefore, that in addition to the award of \$7,477.07 with interest thereon of \$7,125.65 as set forth in the Proposed Decision of April 2, 1958, the claimant is entitled to a supplemental award in the amount of \$2,041.60, plus interest thereon of \$1,900.93 with such interest computed as follows:

| Date claim arose | Amount of award | Amount of interest |
|---------------------|-----------------|--------------------|
| June 28, 1918 ----- | \$1,493.52 | \$1,378.52 |
| Dec. 27, 1917 ----- | 548.08 | 522.41 |
| Total ----- | \$2,041.60 | \$1,900.93 |

SUPPLEMENTAL AWARD

On the above evidence and grounds, a supplemental award is hereby made to JULES M. PAVITT, claimant herein, in the amount of two thousand forty-one dollars and sixty cents (\$2,041.60), plus interest thereon of one thousand nine hundred dollars and ninety-three cents (\$1,900.93). No determination is made with respect to interest for any period subsequent to November 16, 1933.

Payment of the award herein shall not be construed to have divested claimant herein or the Government of the United States on his behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

Dated at Washington, D.C.
February 2, 1959.

SUPPLEMENTAL FINAL DECISION

The Commission issued its Supplemental Proposed Decision on this claim on February 2, 1959, a copy of which was duly served upon claimant. No objections or request for a hearing having been filed within twenty days after such service and general notice of the Supplemental Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Supplemental Proposed Decision be and the same is hereby entered as the Supplemental Final Decision on this claim, and it is further

ORDERED that the additional award granted pursuant thereto be certified to the Secretary of the Treasury.

Dated at Washington, D.C.

March 16, 1959.

Nationality requirements under Section 305(a)(2).—Although it was only claims of nationals of the United States that were included in Section 305(a)(2), the Act was silent as to the period of time during which, in order to be compensable, such claims must have been owned by United States nationals. Since claims under Section 305 were to be determined "in accordance with applicable substantive law, including international law," the Commission applied the international law principle under which a claim will be espoused by the United States Government only if the property upon which it is based was owned by a United States national or nationals at the time of loss, and the claim was owned by a United States national or nationals continuously thereafter. An identical situation existed with respect to claims against Bulgaria, Hungary, and Rumania under Section 303 of the Act, and is discussed in the annotations to *Claim of Margot Factor*, appearing at page 168. As was the case under Section 303, the Commission held that the nationality requirement in claims under Section 305 was satisfied by United States ownership from the date of loss until the date of filing the claim, following the decision in *Claim of Benedict Lustgarten*, Claim No. RUM-30575, Dec. No. RUM-434, 10 FCSC Semiann. Rep. 119 (Jan.-June 1959).

Accordingly, a claim against the Soviet Government, filed by a person who had never been a national of the United States, was denied. (*Claim of Peter Romasew*, Claim No. SOV-40843, Dec. No. SOV-240, 10 FCSC Semiann. Rep. 177 (Jan.-June 1959).) Where a claimant filed a declaration of intention to become a citizen of the United States prior to the loss of his property, but was not naturalized until after the loss, the claim was denied on the ground that the property was not owned by a United States national at the time of loss. The Commission re-

jected claimant's contention that he enjoyed *de facto* citizenship from the time of his declaration of intention until his naturalization, which then was retroactive to the date of the declaration; and held that the declaration of intention did not clothe him with citizenship or confer upon him the right to diplomatic protection of the United States with respect to injuries suffered from foreign governments. (*Claim of Alexander Hinchuk & Company*, Claim No. SOV-41057, Dec. No. SOV-1953.) For a further discussion of the effect of filing a declaration of intention, see the annotations to *Claim of Gerardo Soliven*, particularly the reference to *Claim of Walter Ludwig Koerber*, Claim No. W-3917, Dec. No. W-1322, appearing at page 574. A claim based upon certain securities which were repudiated on February 10, 1918, acquired by claimant after the claim arose but before he became a United States national, was denied for lack of continuous ownership by United States nationals from the date of loss to the date of filing the claim. (*Claim of Henry Frederick Heitmann*, Claim No. SOV-40791, Dec. No. SOV-226, 10 FCSC Semiann. Rep. 176 (Jan.-June 1959).) A portion of a claim by an American corporation was based upon losses suffered by 30 of its employees in Russia who were compelled to flee the country leaving most of their belongings behind. Claimant reimbursed its employees for their losses, and their claims against the Soviet Government were assigned to claimant. Inasmuch as ten of the employees were not nationals of the United States, the portion of the claim embracing their losses was denied. The assignment of their claims to an enterprise which qualified as a United States national did not cure the defect of ownership of the property by nonnationals of the United States at the time of loss. (*Claim of International Harvester Company*, Claim No. SOV-41072, Dec. No. SOV-3127, 10 FCSC Semiann. Rep. 256 (Jan.-June 1959).)

The *Pavitt* claim also provides an example of a denial by Proposed Decision of a portion of a claim under Section 305 of the Act because of failure to meet the requirement of Section 311(b) of ownership by United States nationals of at least 25% of the stock of a corporation which directly suffered the loss. After amendment of Section 311(b) on August 8, 1958, this requirement was removed for claims based upon direct ownership interest in the corporation which sustained the loss, and an award was made in the *Pavitt* claim by Supplemental Proposed Decision. For further discussion of Section 311(b) and its amendment, see the annotations to *Claim of Niagara Share Corporation*, appearing on page 184.

Presumption of ownership by United States nationals.—The Commission received many claims based upon bonds issued by the Russian Government and formally repudiated on February 10, 1918. Even after their repudiation, such bonds were actively traded; and in many instances the claimant, though a United States national, had acquired the bonds after February 10, 1918 and had no means of identifying previous owners or their nationality. In this situation, strict requirements of proof of ownership by United States nationals from the date of loss to the date of filing the claim would have resulted in denial of most of such claims. Russian Government bond issues of June 18, 1916 and November 18, 1916 were expressed in United States dollars

and had been issued specifically for the American market. Both issues were fully subscribed and sold by financial institutions in the United States. Therefore, the Commission adopted a policy of presuming, in claims by United States nationals who acquired such bonds after February 10, 1918, that there had been continuous ownership of the bonds by United States nationals since February 10, 1918, in the absence of any evidence to create a doubt. This presumption was not necessarily limited to bonds expressed in United States dollars. For instance, an award was made on a claim based upon 14 Imperial Russian Government Short Term War Loan Bonds of 1916, expressed in rubles, acquired by claimant on April 27, 1922 from a firm of investment brokers in the United States. Stating that it had ascertained that bonds of this issue were traded on the market in the United States in large quantities prior to February 10, 1918, the Commission concluded, in the absence of any evidence to the contrary, that claimant's bonds had been owned continuously from February 10, 1918 by nationals of the United States. (*Claim of Theodore Francis Green*, Claim No. SOV-41084, Dec. No. SOV-1189, 10 FCSC Semiann. Rep. 205 (Jan.-June 1959).) On the other hand, where the identity and nationality of all previous owners since February 10, 1918 of Second 5% Imperial Russian Government Loan of 1822 bonds was not known, and the Commission's investigation disclosed that such bonds were not traded on the market or generally circulated in the United States prior to February 10, 1918, the Commission declined to make the presumption of ownership by United States nationals and denied the claim. (*Claim of Edward Lawrence Willard*, Claim No. SOV-41778, Dec. No. SOV-1052.) The same result was reached in a claim involving "Liberty Bonds" issued in 1917 by the Provisional Government of Russia. (*Claim of Olney Hampton Bryant*, Claim No. SOV-40031, Dec. No. SOV-1249, 10 FCSC Semiann. Rep. 204 (Jan.-June 1959).) In another instance, involving Imperial Russian Government 4% State Income Bonds of 1894, the identity and nationality of owners between 1918 and 1931 was not known. Inasmuch as claimant's bonds bore a written notation and rubber stamp indicating that they had been located in Russia on May 1, 1920, the claim was denied for failure to meet the nationality requirement. (*Claim of Euphemia Loretta Hoague*, Claim No. SOV-42158, Dec. No. SOV-891, 10 FCSC Semiann. Rep. 222 (Jan.-June 1959).)

Award limited to extent of American interests on date of loss.—Another facet of the *Paritt* claim is its denial of a portion based upon additional interests in stock holdings in Russian corporations, acquired after the nationalization of the corporations. Claimant's award was limited to the extent of his holdings at the time of nationalization, because it was not established that any additional interest acquired thereafter had been owned by nationals of the United States at the time of loss. This is similar to the denial of a portion of a claim based upon assignments from nonnationals of the United States made after the loss occurred, in *Claim of International Harvester Company, supra*. A claimant's award is not necessarily limited to the interests in property which he owned at the time of loss, but is limited to interests which were owned by United States nationals at the

time of loss, owned by claimant at the time of filing the claim, and owned by United States nationals at all times between. A portion of one claim was based upon ownership of stock in a Russian corporation which had been nationalized. Claimant's 84% interest at the time of filing the claim had been owned at the time of loss by a British corporation of which claimant owned 54.54%. Accordingly, the award was limited to 48.33%, or the proportion owned by claimant, as a United States national, at the time of loss. (*Claim of Westinghouse Air Brake Company*, Claim No. SOV-41804, Dec. No. SOV-3124, 10 FCSC Semiann. Rep. 240 (Jan.-June 1959).)

Value.—Due to the lapse of some forty years between the nationalization of property by the Soviet Government and the consideration of claims for compensation therefor, the valuation of property as of the time of loss presented a particularly difficult problem, and the quantity and quality of evidence available for its solution was meager. All evidence having any bearing upon the question of value was considered. In determining the value of shares of stock at the time of nationalization of Russian corporations, the type of evidence available varied from case to case, and the element deemed most reliable and carrying the greatest weight varied accordingly, from stock market quotations as in the *Pavitt* claim, to purchase price paid (*Claim of General Electric Company*, Claim No. SOV-42234, Dec. No. SOV-3119, 10 FCSC Semiann. Rep. 234 (Jan.-June 1959)), to net worth as determined from financial statements (*Claim of Western Electric Company*, Claim No. SOV-40204, Dec. No. SOV-3117, 10 FCSC Semiann. Rep. 229 (Jan.-June 1959)). For an instance in which the value of a corporation at the time of nationalization was determined from the balance sheet for the closest available period of time, after making certain adjustments in some of the figures as warranted by the evidence of record, see *Claim of the Singer Manufacturing Company*, Claim No. SOV-40920, Dec. No. SOV-3128, appearing at page 367.

Procedure.—The *Pavitt* claim illustrates the procedure followed by the Commission when it was determined that a claimant was entitled to an additional award, after a previous award had been granted him by Final Decision and certified to the Secretary of the Treasury for payment. A Supplemental Proposed Decision was issued making a Supplemental Award, followed by a Supplemental Final Decision, which was certified to the Secretary of the Treasury. In this manner the Treasury Department was alerted to the fact that a previous award had been made to the same person, which was of importance in the calculation of payments to be made on account of awards under Section 310 of the Act, paragraph (c) of which provided that for such purpose an "award" should be deemed to mean the aggregate of all awards certified in favor of the same claimant and payable from the same fund.

Other procedural matters of interest under Section 305 concerned the question of timeliness of filing claims. Under the statute and Commission regulations, the last date for filing claims under Title III of the Act was March 31, 1956; but since this date fell on a Saturday, the time was extended until the end of the next day which was neither a Saturday, Sunday, or holiday.

Consequently, the last day for timely filing was April 2, 1956. The Commission ruled that a communication made to it prior to April 3, 1956, indicating an intent to file a claim, was sufficient to preserve for a reasonable time the right to complete and file a claim on an official claim form. Where a claimant failed to file his claim or communicate with the Commission thereon prior to April 3, 1956, the claim was denied as not timely filed. (*Claim of Fred Cornell*, Claim No. SOV-42917, Dec. No. SOV-227, 10 FCSC Semiann. Rep. 176 (Jan.-June 1959).) In another instance, while a claim was pending before the Commission, claimant assigned his rights therein to another. The Commission held that an assignee, not having been a claimant when the claim was filed or on the terminal date for filing claims, could not be made a party to a valid claim except under circumstances where an assignment comes into being by operation of law. A claim by the assignee would be a new claim, never asserted before, for which the filing period had expired. Consequently, the Commission did not recognize the assignment, but made an award to the original claimant whose claim was found to be valid. (*Claim of Batavian National Bank*, Claim No. SOV-40987, Dec. No. SOV-2003, 10 FCSC Semiann. Rep. 199 (Jan.-June 1959).)

In the Matter of the Claim of

Claim No. SOV-41261
Decision No. SOV-3126

**THE FIRST NATIONAL CITY BANK
OF NEW YORK**

Against the Soviet Government

Annulment by the Soviet Government of secured or unsecured obligations of nationalized Russian entities, and repudiation by the Soviet Government of bonds and other obligations incurred or guaranteed by predecessor Russian governments, gave rise to valid claims under Section 305(a)(2), Title III of the 1949 Act. Barring creditors from enforcing their rights constituted a denial of justice under international law. Severe restrictions imposed on bank accounts by the Soviet Government in implementing its decree nationalizing banks in Russia constituted a confiscation of bank deposits under Section 305(a)(2).

Award on claim under Section 305(a)(2), acquired after it arose, limited pursuant to Section 307 to "actual consideration last paid therefor." Award for repudiated ruble bonds and obligations measured by exchange rate of ruble in effect on date of repudiation. Award under Section 305(a)(2) offset by amounts owed or received by claimant on account of same loss.

PROPOSED DECISION

This is a claim for \$39,160,765.96 plus interest by The First National City Bank of New York (hereinafter referred to as

"Claimant") against the Soviet Government under Section 305 of the International Claims Settlement Act of 1949, as amended.

The record establishes that Claimant and its predecessors, The Farmers Loan and Trust Co., The City Company of New York, Inc. (formerly called The National City Company), The Bank of America, National Association, and The Nassau National Bank of Brooklyn in New York, qualify as nationals of the United States as defined by Section 301(2)(B) of the Act; and that Claimant succeeded to the interests of the said predecessors in and to part of this claim by merger, consolidation and otherwise.

The claim is subdivided into fourteen (14) separate categories (Schedules A through N annexed to the Statement of Claim) as follows:

| | <i>Amount claimed</i> |
|--|---------------------------|
| Schedule A—Balance due on account of a judgment in favor of Herbert J. Grant against the Russo-Asiatic Bank----- | \$799,133.59 |
| Schedule B—Dollar Treasury Notes of the Provisional Government of Russia and other Dollar bonds and obligations of the Imperial Russian Government purchased by Claimant's New York Head Office ----- | 2,201,833.75 |
| Schedule C—Loans and Advances made in Dollars by Claimant in New York which Claimant has been unable to collect because the debtors' assets were seized, and/or their businesses nationalized by the Soviet Government, or because the relative collateral security was seized or otherwise taken without compensation by the Soviet Government or its agents and not returned ----- | 344,390.76 |
| Schedule D—Loans made in Dollars by Claimant in New York against ruble deposits held by Claimant's former Petrograd Branch as collateral, which loans Claimant has been unable to collect because the assets of the debtors were seized and/or their businesses nationalized by the Soviet Government----- | 1,236,461.90 |
| Schedule E—Funds on deposit to the credit of Claimant's New York Office with various banks in Russia that were nationalized and merged with the State Bank of Russia by the Soviet Government, which funds have not been repaid to Claimant ----- | 69,063.09 |
| Schedule F—Legal expenses which Claimant was required to incur as a direct result of the seizure by the Soviet Government of Claimant's former Branches in Russia and by other acts and decrees of the Soviet Government ----- | 1,222,000.00 |
| Schedule G—Drafts and other documents received by Claimant from its customers for collection in Russia and remitted during 1917 to banks in Russia which were nationalized and/or seized by the Soviet Government, and which have not since accounted for the proceeds or returned said drafts and documents ----- | 105,052.99 |
| Schedule H—Funds of Claimant's former Petrograd and Moscow Branches on deposit in rubles with the State Bank of Russia, a Department or Agency of the Russian Government, and with private Russian Banks which were nationalized by the Soviet Government and merged with said State Bank, | |

| | <i>Amount claimed</i> |
|--|---------------------------|
| and which funds have not been repaid to Claimant ----- | 28,075,053.74 |
| Schedule I—Imperial Russian Government ruble bonds deposited by Claimant with the State Bank of Russia in guarantee of liabilities as required by the charter granted to Claimant by the Imperial Russian Government to operate Branches in Russia, and which bonds were repudiated by decree of the Soviet Government ----- | 647,873.62 |
| Schedule J—Bills discounted by Claimant's Petrograd Branch which Claimant has been unable to collect because the assets of the obligors were seized and/or their businesses nationalized by the Soviet Government ----- | 388,611.42 |
| Schedule K—Loans made in foreign currencies by Claimant's Petrograd Branch against ruble collateral, which loans Claimant has been unable to collect because the debtors were seized and/or their businesses nationalized by the Soviet Government, and because the ruble collateral was seized or otherwise taken by the Soviet Government or its agents and not returned ----- | 432,455.18 |
| Schedule L—Advances made by Claimant's Petrograd Branch which Claimant has been unable to collect because the assets of the debtors were seized and/or their businesses nationalized by the Soviet Government and because the collateral securities were seized or otherwise taken by the Soviet Government or its agents and not returned ----- | 451,467.64 |
| Schedule M—Customers' securities held as collateral or for safekeeping by Claimant's Russian Branches in safe deposit boxes in the Volga-Kama Bank at Petrograd or deposited in safes lodged with the Swedish Consulate General at Moscow prior to departure of Claimant's Branch personnel from Russia ----- | 3,017,318.28 |
| Schedule N—Property (office furniture and equipment) of Claimant's Petrograd and Moscow Branches seized by the Soviet Government or its agent and/or other losses occasioned by the seizure of said Branches and the expulsion of their American personnel ----- | 170,000.00 |

The record discloses that on January 4, 1917, the Russian Government granted Claimant a charter to conduct banking business in Russia, and that Claimant thereafter opened two Branch Offices in Russia, namely, in Moscow and Petrograd. In connection therewith, said Branch Offices maintained ruble deposits with the former Russian State Bank and with other former Russian private banks. By decree dated December 27, 1917, the Soviet Government nationalized all Russian owned banks. Said decree did not apply to branches of foreign owned banks. The latter were directed to be liquidated by Soviet decree dated December 2, 1918. However, due to stringent restrictions placed on all banking business in Russia, immediately following the enactment of the aforementioned nationalization decree, all private banking opera-

tions in Moscow and Petrograd and in other areas then controlled by the Soviet Government came to an end for all intents and purposes, as of December 28, 1917.

The record discloses that beginning December 28, 1917, Claimant's Petrograd Branch was occupied by a squad of Bolshevik soldiers for a period of five days; that at the end of such occupation the soldiers were removed, following Claimant's pledge to do nothing beyond putting its books in order and to faithfully abide by all instructions issued by the Chief Commissar of the State Bank. Payments to Claimant's customers on account of their deposits with Claimant's Russian Branches were then restricted to 500 rubles per day to American depositors and 150 rubles per week to other depositors, upon condition that such depositors procure permission for such withdrawals from the Chief Commissar of Banking. Claimant's Russian Branches soon found themselves unable to make such payments, since they maintained but a small amount of ruble currency in their banking premises and were prohibited by the Soviet authorities from withdrawing funds on account of their credits (deposits) with the Russian banks. Thereafter, all efforts by Claimant's representatives to maintain a semblance of orderly operations were frustrated by the Soviet Government. On March 9, 1918, Claimant's Petrograd Branch, or what was then left of it, was transferred to Vologda. On August 5, 1918, by direction of the Soviet authorities said Branch was again transferred from Vologda to Moscow. The offer of assistance by the Swedish Moscow Consulate General in Moscow to intervene in an effort to alleviate Claimant's plight was fruitless. However, said Consulate permitted Claimant's representatives to install two safes in the Swedish Mission in Moscow in which Claimant deposited certain of its Russian records and valuables. Finally, and on August 8, 1918, Claimant's Moscow and Petrograd Branches were officially closed, and under orders of the American Moscow Consulate General, Claimant's American representatives and employees left for the United States.

By decree published December 30, 1917, the Soviet Government directed the surrender of all safe deposit boxes. Claimant maintained such boxes in the State Bank and in the Russo-Asiatic Bank in Petrograd, but was not permitted to remove the contents which consisted of securities and other valuables held for safekeeping for Claimant's customers and/or as collateral to secure the repayment of loans and advances.

By decree published on February 10, 1918, the Soviet Government annulled all bonds issued or guaranteed by prior Russian governments.

With the foregoing brief historical background, we are giving

consideration to the instant claim under Section 305(a)(2) of the Act.

*CLAIMANT'S SCHEDULE A: "GRANT" JUDGMENT
AGAINST RUSSO-ASIATIC BANK*

This item was heretofore considered by the Commission as a preferred claim under Section 305(a)(1) of the Act, and was denied by Final Decision dated January 30, 1957, without prejudice to its consideration under Section 305(a)(2) of the Act. The assignment by Claimant to Grant under which the latter procured the judgment against the Russo-Asiatic Bank covered (1) Claimant's deposit of 486,989.23 rubles with the Russo-Asiatic Bank which is included in Schedule E and (2) 3,992,309.16 rubles due from the Russian State Bank to Claimant's Russian Branches, which is included in Schedule H. Accordingly, the claim based on this Item (Schedule A) will hereinafter be determined under the heading "Claimant's Schedule E" and "Claimant's Schedule H."

CLAIMANT'S SCHEDULE B: (1) DOLLAR TREASURY NOTES, (2) RUSSIAN BONDS, and (3) PARTICIPATION CERTIFICATES IN RUSSIAN GOVERNMENT (CREDIT) OBLIGATIONS.

- (1) 5% Dollar Treasury Notes issued by the Provisional Russian Government on May 17, 1917, due May 1, 1918, and extended to November 1, 1919.

The record establishes that claimant is the owner of the above-described notes in the principal amount of \$6,960,000, identified by serial number in "Schedule 1" annexed hereunto. The sum of \$435,000, the principal amount of this issue, was owned by Claimant on February 10, 1918, the date of their annulment by the Soviet Government. Interest thereon has been paid to November 1, 1919. The remaining principal amount of \$6,525,000, represents notes of this issue acquired by Claimant and its predecessors in interest, The Farmers Loan Trust Company and the City Company, subsequent to February 10, 1918, at a cost of \$853,156.25.

Accordingly, and applying the limitation prescribed by Section 307 of the Act, the Commission finds that claimant is entitled to an award based on this Item (1) in the principal amount of \$1,288,156.25, with interest on \$435,000 from November 1, 1919 in the amount of \$366,487.50.

- (2) 5½% Five Year Dollar Bonds issued by the Imperial Russian Government dated December 1, 1916, due December 1, 1921.

The record establishes that claimant is the owner of the above-described bonds in the principal amount of \$1,226,000, identified by serial number in "Schedule 2" annexed hereunto. The sum of \$275,000, the principal amount of this issue, was owned by Claimant's predecessors in interest, The Farmers Loan and Trust Company on February 10, 1918, the date of their annulment. Interest thereon has been paid to November 1, 1919. The remaining principal amount of \$951,000 represents bonds of this issue acquired by Claimant and by the Nassau National Bank of Brooklyn, subsequent to February 10, 1918, at a cost of \$90,727.50. The Nassau National Bank of Brooklyn merged after this purchase with the Bank of America, National Association, Claimant's predecessor.

Accordingly, and applying the limitation prescribed by Section 307 of the Act, the Commission finds that Claimant is entitled to an award based on this Item (2) in the principal amount of \$365,727.50, with interest on \$275,000 from November 1, 1919 in the amount of \$231,687.50.

(3) Participation Certificates in 6½% Three-Year Credit obligation of the Imperial Russian Government due June 18, 1919.

The record establishes that claimant is the owner of \$1,133,000 of the above-described Participation Certificates, identified by serial number in "Schedule 3" annexed hereunto. The sum of \$483,000, the principal amount of such certificates, was owned by claimant on February 10, 1918, the date on which the underlying obligation was annulled by the Soviet Government. Interest thereon has been paid to July 10, 1919. The remaining principal amount of \$650,000 represents participation certificates which claimant purchased subsequent to February 10, 1918, at a cost of \$65,000.

Accordingly, and applying the limitation prescribed by Section 307 of the Act, the Commission finds that Claimant is entitled to an award on this Item (3) in the principal amount of \$548,000 with interest on \$483,000 from July 10, 1919 in the amount of \$415,863.00.

RECAPITULATION "SCHEDULE B"

| | Principal | Interest |
|-------------|----------------|----------------|
| (1) | \$1,288,156.25 | \$366,487.50 |
| (2) | 365,727.50 | 231,687.50 |
| (3) | 548,000.00 | 415,863.00 |
| Total ----- | \$2,201,883.75 | \$1,014,038.00 |

*CLAIMANT'S SCHEDULE C: DOLLAR LOANS AND
ADVANCES, SECURED AND UNSECURED.*

(1) *C. B. Richards & Co.* (hereinafter referred to as
"Richards")

The record establishes that on September 25, 1917, Claimant's New York Office received for collection from Richards a sight draft for \$112,374.89 drawn on Northern Railway Company, Moscow, with shipping documents attached, covering merchandise consigned to the drawee. Claimant advanced \$56,187.45 to Richards against the draft and forwarded it to its Petrograd Branch for collection. The drawee, or other instrumentalities of the Soviet Government obtained possession of the merchandise without payment of the draft. Subsequently and in 1922, Richards sued Claimant for the latter's failure to collect the draft or return it and the shipping documents covering the merchandise. Richards also sued Claimant for \$194,200 for the value of its ruble deposit with Claimant's Petrograd Branch. In 1931 both actions were settled by claimant for \$242,000. By the terms of settlement, Richards assigned all of its interest in the draft, shipping documents and the merchandise to Claimant.

The Commission finds that the drafts and merchandise were taken by the Soviet Government without compensation on December 28, 1917, and that by reason thereof Claimant is entitled to an award on this Item (1) in the principal amount of \$112,374.89 plus interest thereon from December 28, 1917 in the amount of \$107,093.27.

(2) *Russian Siemens & Halske Electric Company of
Petrograd* (a former Russian Company)

The record establishes that in 1917, Claimant's New York Office advanced dollar funds for the purchase of machinery to the above-named company, an enterprise organized under the Imperial Law of Russia; that said company was nationalized by the Soviet Government in 1918 and as the result thereof, Claimant was deprived of its ability to collect the balance due on the advances which amounted to \$114,587.71.

Accordingly, the Commission finds that Claimant is entitled to an award on this Item (2) in the principal amount of \$114,587.71, with interest thereon from December 28, 1917 in the amount of \$109,202.09.

The debtor, Siemens & Halske Electric Company, had 447,300 rubles on deposit with Claimant's Petrograd Branch as security for the repayment of the advances. Adjustment for said deposit is hereinafter included under heading "Claimant's Schedule II."

(3) *Societe des Mines Bogoslovsky of Petrograd* (a former Russian corporation)

This transaction and the resulting loss is similar in nature to the one described in the preceding Item (2). The amount involved was \$39,082.00. The Commission finds that Claimant is entitled to an award on this Item (3) in the principal amount of \$39,082.00, plus interest thereon from December 28, 1917 in the amount of \$37,245.15.

(4) *Banque de Commerce de Siberie Petrograd* (hereinafter referred to as "Commerce Bank")

The record establishes that in 1917, the Commerce Bank had overdrawn its dollar account with the Claimant's New York Office to the extent of \$111,544.89. Thereafter, Claimant as correspondent of Commerce Bank received from George E. Keith Export Company, \$215,570.70 representing the proceeds of a shipment of calfskins from Russia made by Steinberg Bros. Ltd. to said George E. Keith Export Company. This fund when so received by Claimant was credited to the account of Commerce Bank, thus resulting in a credit balance of the latter's in favor of \$104,025.81. However, in June 1921, Steinberg Bros. Ltd., sued Claimant for the full amount of \$215,570.70, claiming it was entitled thereto. The action was settled in February 1924 at a cost to Claimant of \$190,000 which was \$78,246.20 more than the credit balance then standing on Claimant's books in favor of the Commerce Bank. Claimant states that it received instructions from the Commerce Bank that the net amount of the proceeds received by Claimant in connection with this transaction should be credited to Steinberg Bros. Ltd., after liquidating the Commerce Bank's special account. The Commerce Bank was nationalized by the Soviet Government on December 27, 1917.

The Commission finds that by reason of the foregoing, Claimant is entitled to an award on this Item (4) in the principal amount of \$78,246.20 with interest thereon from December 28, 1917 in the amount of \$74,568.63.

RECAPITULATION "SCHEDULE C"

| | Principal | Interest |
|---|--------------|--------------|
| (1) C. B. Richards & Co. ----- | \$112,374.89 | \$107,093.27 |
| (2) Russian Siemens & Halske Electric Co. of Petrograd ----- | 114,587.71 | 109,202.09 |
| (3) Societe des Mines Bogoslovsky ----- | 39,082.00 | 37,245.15 |
| (4) Banque de Commerce de Siberie ----- | 78,246.20 | 74,568.63 |
| Total ----- | \$344,290.80 | \$328,109.14 |

CLAIMANT'S SCHEDULE D: DOLLAR LOANS SECURED BY RUBLE DEPOSITS

The record establishes that Claimant's New York Office made dollar loans to finance imports by five Russian companies and three Russian individuals. The loans were approved by the then Russian government as necessary for Russia's World War I efforts. The aggregate unpaid balance of these loans amounts to \$1,236,461.91 which includes the unpaid balance of a loan in the amount of \$226,000 made to one Michael Terestchenko, whose liability thereon was released by Claimant for a nominal sum.

The loans were secured by rubles deposited as collateral with Claimant's Petrograd Branch, in the aggregate amount of 17,681,444 rubles.

The five Russian debtor companies were nationalized by the Soviet Government. The assets of the individual debtors were likewise seized by the Soviet Government.

Claimant was unable to recoup any of its losses arising out of the transactions described above. The collateral security deposited with the State Bank of Russia forms part of the total ruble deposits which is claimed under Claimant's "Schedule H."

The Commission finds that by reason of the foregoing, Claimant is entitled to an award for this item in the principal amount of \$1,010,461.91 with interest thereon from December 28, 1917 in the amount of \$962,970.20.

Adjustment for the ruble collateral security is hereinafter included under heading "Claimant's Schedule H."

CLAIMANT'S SCHEDULE E: FUNDS ON DEPOSIT WITH RUSSIAN PRIVATE BANKS

The record establishes that Claimant's New York Office had on deposit with nine former Russian private owned banks a balance in the aggregate amount of 575,525.76 rubles; that said banks were nationalized by the Soviet Government by decree dated December 27, 1917 and that as the result thereof, said deposits were taken by the Soviet Government, without compensation, on December 28, 1917.

Statistics available to the Commission establish that the value of the ruble on the New York market as of December 28, 1917, was 13 cents per ruble. Accordingly, the Commission finds that Claimant is entitled to an award for this item in the principal amount of \$71,818.35 plus interest thereon from December 28, 1917 in the amount of \$71,301.89.

The aforesaid deposits included 486,989.23 rubles deposited with the Russo-Asiatic Bank which was assigned by Claimant to

Herbert J. Grant (see Claimant's "Schedule A") on account of which Claimant collected \$232,623.66 from Grant. This payment is reflected in the item hereinafter designated as "Offset."

CLAIMANT'S SCHEDULE F: LEGAL EXPENSES

This item is for legal expenses assertedly incurred by Claimant as the result of the seizure by the Soviet Government of Claimant's former Branches in Russia and other acts and decrees of that government, including legal expenses incurred by Claimant in defending suits brought against it in New York by depositors of its Russian Branches, and in defending other legal actions against it arising directly from actions of the Soviet Government, its agents or instrumentalities.

The Commission holds that such legal expenses are not compensable under the Act, and this item is, therefore, disallowed.

CLAIMANT'S SCHEDULE G: DRAFTS AND OTHER DOCUMENTS BELONGING TO CLAIMANT'S CUSTOMERS

This item is based on drafts and other documents belonging to Claimant's customers which were received by Claimant's New York office for forwarding to Russian banks for collection and which were never paid nor returned by said Russian banks.

Since Claimant was acting solely in the capacity as agent for collection for its customers in these transactions and has or had no beneficial interest therein, the claim based thereon is also disallowed.

CLAIMANT'S SCHEDULE H: RUBLE DEPOSITS WITH STATE BANK OF RUSSIA

In the operations of its Russian Branches, Claimant kept the maximum amount of 300,000 rubles in cash in its banking premises until September 1917, when due to the then unsettled conditions and cash stringency caused by rapidly rising prices, the cash reserves were increased to 1,500,000 rubles. The remainder of its Russian funds (including customers' ruble deposits in Claimant's Russian Branches) were deposited by Claimant with the State Bank of Russia.

The record establishes that Claimant's Russian Branches had a balance of 225,878,411.13 rubles on deposit with the State Bank of Russia which the Commission finds was taken by the Soviet Government as of December 28, 1917.

Included in the aforesaid balance was 21,343,554 rubles belonging to Claimant's customers which were deposited as collateral

security for repayment of loans and advances. (Claimant's Schedules C, D, & K.) The net remaining balance of Claimant's deposits in the State Bank was, therefore, 204,534,857.13 rubles.

As against such deposits, Claimant's liabilities to its Russian Branch depositors amounted to 239,719,914 rubles, thus resulting in an over-all debit of 35,185,056.87 rubles (amounting to \$4,574,057.39 at the conversion rate of 13 cents per ruble) attributable to Claimant's Russian deposit transactions with the Russian State Bank.

The Commission has held that the ruble deposits standing to the credit of Claimant's depositors in Claimant's Russian Branches were the property of such depositors, and that when the Soviet Government nationalized Russian Banks by decree of December 27, 1917, it took the property of the Claimant's depositors. Accordingly, the Commission has made awards to such customers based on such deposits, if the nationality requirements had been met. (*In the Matter of the Claim of The Tanglefoot Company*, Claim No. SOV-41795.)

The evidence establishes that subsequent to December 28, 1917, and prior to the recognition of the Soviet Union by the United States, Claimant paid out to depositors of the Russian Branches the aggregate amount of \$3,630,805.02 plus 23,592,310 rubles in currency. The currency rubles were paid during the years 1922 through 1926 as follows:

| 1922: | Rubles |
|------------------------|------------|
| January to March ----- | 13,005,635 |
| April to June ----- | 6,111,310 |
| July to December ----- | 1,493,705 |
| 1923 ----- | 1,309,600 |
| 1924 ----- | 105,960 |
| 1925 ----- | 30,000 |
| 1926 ----- | 1,536,100 |

According to statistics available to the Commission, the quotations for ruble currency in the United States for the above respective months and years are as follows:

| 1922: | Average (cents per ruble) |
|------------------------|------------------------------|
| January to March ----- | 0.177 |
| April to June ----- | 0.153 |
| July to December ----- | 0.092 |
| 1923 ----- | 0.066 |
| 1924 ----- | 0.108 |
| 1925 ----- | 0.098 |
| 1926 ----- | No value |

Based on the foregoing, the Commission finds that the 23,592,310 currency rubles which Claimant paid out as aforesaid was of the value of \$34,694.66 which together with the dollar payment (\$3,630,805.02) totals \$3,665,499.68. Since the debit of \$4,574,057.39 found above, exceeded the aggregate amount paid by claimant to the depositors of its Russian Branches, the Commission finds that Claimant did not sustain a compensable loss under the Act, arising out of its ruble deposits with the State Bank of Russia. Accordingly, the claim based on this item must be and hereby is denied.

*CLAIMANT'S SCHEDULE I: IMPERIAL RUSSIAN
GOVERNMENT 5½% WAR LOAN BONDS OF 1916*

The record establishes that Claimant, as a prerequisite to doing business in Russia, deposited with the State Bank of Russia, 5½% Imperial Russian Government War Loan Bonds in the face amount of 5,000,000 rubles; that said bonds were annulled by the Soviet Government by decree of February 10, 1918 and subsequently taken by that Government. The principal amount claimed for this item includes interest assertedly due and payable as of February 10, 1918. The bonds of this issue had interest coupons attached. No satisfactory proof or explanation has been adduced to establish that all due and payable interest coupons were not clipped and converted into cash by Claimant or, on its behalf, by the depository, State Bank of Russia. The Commission finds that Claimant has failed to establish its claim with respect to unpaid interest coupons on these bonds. Accordingly, the Commission finds that Claimant is entitled to an award on this item in the principal amount of \$650,000, being the dollar equivalent of 5,000,000 rubles at the rate of 13 cents per ruble as of February 10, 1918, together with interest thereon from said date in the amount of \$614,900.

*CLAIMANT'S SCHEDULE J: BILLS DISCOUNTED
BY CLAIMANT'S PETROGRAD BRANCH*

The record establishes that Claimant's Petrograd Branch, in the regular course of its business, discounted bills and notes for Russian companies and/or individuals, in the aggregate ruble amount of 3,238,428.52 rubles and that none of such bills and notes could be collected by Claimant because the obligors and/or their businesses were nationalized by the Soviet Government. The Commission finds that by reason of the foregoing, Claimant is entitled to an award on this item in the principal amount of \$420,995.71, being the equivalent of 3,238,428.52 rubles, at the

rate of 13 cents per ruble. The due dates on the several bills and notes involved vary. The aggregate amount of interest on all of such bills and notes from their respective due dates to November 16, 1933, is \$388,846.40. Accordingly, the Commission finds that Claimant is entitled to an award of \$388,846.40 for interest on this item.

CLAIMANT'S SCHEDULE K: LOANS IN FOREIGN CURRENCY SECURED BY RUBLE COLLATERAL

The record establishes that Claimant's Petrograd Branch made loans to six of its customers in foreign currency (Swedish Kronen, British Pounds Sterling, Chinese Yen), and in United States dollars (\$206,000). The dollar equivalent of said loans in foreign currency amounted to \$226,455.18 which, together with the \$206,000 loan, totals \$432,455.18. As collateral security for the repayment of said loans, the borrowers deposited with Claimant's Petrograd Branch, rubles in the aggregate amount of 3,214,810. The debtors' businesses and enterprises in Russia were seized by the Soviet Government and by reason thereof and the nationalization of Russian Banks, Claimant was deprived of its ability to collect the loans. Accordingly, the Commission finds that Claimant is entitled to an award on this item in the principal amount of \$432,455.18, with interest thereon from December 28, 1917 in the amount of \$412,129.79.

CLAIMANT'S SCHEDULE L: ADVANCES (LOANS) SECURED BY RUSSIAN STOCKS AND BONDS, BY CHECK AND BY MERCHANDISE IN RUSSIA

The record establishes that Claimant's Petrograd Branch made loans to ten of its customers. The loans were secured by Russian stocks and bonds and other property belonging to the borrowers. The stocks and bonds (collateral securities) were of the market value in excess of 6,000,000 rubles. The unpaid principal amount of the loans totaled 3,728,071.98 rubles.

The Commission finds that the collateral securities were taken by the Soviet Government on December 28, 1918 and that by reason thereof and the nationalization of Russian Banks and the borrowers' business enterprises by the Soviet Government, Claimant was deprived of its ability to collect the loans. Accordingly, the Commission finds that Claimant is entitled to an award on this item in the principal amount of \$484,649.35, being the equivalent of 3,728,071.91 rubles at the rate of 13 cents per ruble, with interest thereon from December 28, 1917 in the amount of \$461,870.83.

CLAIMANT'S SCHEDULE M: CUSTOMERS' SECURITIES HELD AS COLLATERAL AND FOR SAFE-KEEPING

Claimant has withdrawn its claim based on this item. (See Claimant's Memorandum dated May 5, 1959.)

CLAIMANT'S SCHEDULE N: FURNITURE, OFFICE EQUIPMENT, FIXTURES, ETC., AND MISCELLANEOUS EXPENSES

The record establishes that Claimant's above-mentioned personal property located in its Moscow and Petrograd Branches, of the value of \$50,000.00 was taken by the Soviet Government without compensation August 5, 1918. Sums expended for the evacuation of Claimant's American personnel from Russia and for salaries paid to such employees, which Claimant fixes at \$120,000, are not compensable under the Act, and the claim based thereon, is hereby disallowed.

Accordingly, the Commission finds that Claimant is entitled to an award for this item in the principal amount of \$50,000 with interest thereon from August 5, 1918, in the amount of \$45,841.67.

CREDITOR CLAIMS

Claimant's Schedules C, D, J, K and L represent so-called "creditor claims."

Creditor claims, have been considered by the Commission with specific reference to Section 303 of the Act (*In re Claim of European Mortgage Series B Corporation*, Claim No. HUNG-22020, Decision No. HUNG-1605). It was there held, by majority opinion, that in the light of legislative history and background and the language of Section 303 of the Act (which relates to claims against the Governments of Hungary, Rumania and Bulgaria), the only "creditor claims" which come within the purview of Section 303 of the Act are those which fall within the narrow confines of subsection 3 thereof. It was, however, pointed out in that decision that:

It is not intended to find that a creditor claimant could under no circumstances show himself entitled to recover, particularly under a statute with different background, history and language. . . .

The background, history and language of Section 305 differ materially from that of Section 303 which follows an exclusionary pattern listing three specific classes of claims to be compensated. Section 305 on the other hand, contains no similar restrictions

as to the type and scope of claims which may constitute the basis of an award against the Soviet Government.

Section 305(a) (2) of the Act provides:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts . . . claims arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

The rights and remedies of creditors with respect to state and nationalized enterprises were for all intents and purposes completely extinguished by the Soviet decree dated March 4, 1919 and published on March 7, 1919 which, *inter alia*, provided that:

State enterprises are freed from the payment of all debts to private persons and enterprises including payment on bond loans, with the exception only of wages due to their workers and employees.

No court or other tribunal was made available by the Soviet Government to creditors of the nationalized enterprises, secured or unsecured, for fixing and payment of their damage and loss.

The Commission finds that the conduct of the Soviet Government, recited above, constituted not only a denial of justice, but an outright repudiation of its own obligation, and that by reason thereof claimant has a valid claim under Section 305(a) (2) of the Act, for the amounts stated in Claimant's Schedules C, D, J, K, and L.

The Commission, therefore, concludes that Claimant is entitled to the compensation of the creditor's claim, as outlined above.

CLAIMANT'S AGREEMENT REGARDING CUSTOMERS' RUBLE DEPOSITS

Claimant contends that it is entitled to an award for rubles deposited by certain of its customers with its Russian Branches by reason of its promise made in agreements entered into between it and such depositors to pay the latter, on their wholly unsettled claims and partially settled claims for their ruble deposits, on the same basis which claimant might settle such claims with the present or future Russian Government. As hereinbefore indicated, (see "Claimant's Schedule H," above) the Commission held that the owners of these deposits and not the Claimant herein have sustained the loss. Moreover, the so-called Litvinov Assignment *did not settle* claims of United States nationals against the Soviet Government. On the contrary, said Assignment was executed and delivered ". . . preparatory to a final settlement of the claims and counterclaims of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals. . . ."

(Emphasis supplied.) In this connection, Section 313 of the Act provides that:

Payment of any award made pursuant to section 303 or 305 shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim, or be construed to have divested any claimant, or the United States on his behalf, of any rights against the appropriate foreign government or national for the unpaid balance of his claim or for restitution of his property. All awards or payments made pursuant to this title shall be without prejudice to the claims of the United States against any foreign government.

Claimant's contention with respect to the agreements regarding customers' ruble deposits must therefore be, and hereby is, rejected.

INTEREST

All the awards for interest have been computed at the rate of 6% per annum from the date the claim arose until November 16, 1933, the date of the Litvinov Assignment (Section 301(6) of the Act). No determination has been made with respect to interest subsequent to November 16, 1933.

OFFSET

Accredited representatives of the former Provisional Russian Government, and certain former Russian banks, corporations, commercial firms etc., maintained dollar accounts with Claimant in New York. Claimant asserts that it paid out all such dollar accounts with the exception of \$1,893,864.54 (originally stated as being \$1,890,048.72), which it retained. In addition thereto, Claimant has collected \$232,623.66 on account of the "Grant Judgment," thus making a total of \$2,126,487.54.

Claimant concedes that the aforesaid \$2,126,487.54 is a proper offset with respect to its claims against the Soviet Government but contends that "for the purpose of the present claim, the \$1,890,048.72 Russian funds set off by City Bank (Claimant) against the Russian Government securities (see Claimant's Schedule B) held by the City Bank, legally must be treated as a set off against the face value or principal amount of \$9,319,000 of such securities held by City Bank, and accrued interest."

The Commission holds that such contention has no merit.

In considering that part of the instant claim based on Russian dollar securities (Claimant's Schedule E) and applying Section 307 of the Act, the Commission found that while the face amount

of such securities totaled \$9,319,000, an award thereon, under the Act, is limited to \$2,201,833.75.

Accordingly, the Commission concludes that \$2,126,487.54 should be offset in reduction of the principal amount of the award made herein, i.e., against the compensable loss under Section 305(a)(2) of the Act. To hold otherwise would, in effect, result in an award for a claim which is not compensable under the Act.

RECAPITULATION OF AWARD

| | Principal | Interest |
|-----------------------------|----------------|----------------|
| Claimant's schedule B ----- | \$2,201,883.75 | \$1,014,038.00 |
| Claimant's schedule C ----- | 344,290.80 | 328,109.14 |
| Claimant's schedule D ----- | 1,010,461.91 | 962,970.20 |
| Claimant's schedule E ----- | 74,818.35 | 71,301.89 |
| Claimant's schedule I ----- | 650,000.00 | 614,900.00 |
| Claimant's schedule J ----- | 420,995.71 | 388,846.40 |
| Claimant's schedule K ----- | 432,455.18 | 412,129.79 |
| Claimant's schedule L ----- | 484,649.35 | 461,870.83 |
| Claimant's schedule N ----- | 50,000.00 | 45,841.67 |
| Total ----- | \$5,669,555.05 | \$4,300,007.92 |
| Less offset ----- | 2,126,487.54 | 2,026,542.63 |
| Total ----- | \$3,543,067.51 | \$2,273,465.29 |

AWARD

On the above evidence and grounds and upon the entire record an award is hereby made under Section 305(a)(2) of the Act to THE FIRST NATIONAL CITY BANK OF NEW YORK, Claimant herein, in the principal amount of three million five hundred forty-three thousand sixty-seven dollars and fifty-one cents (\$3,543,067.51) plus interest in the amount of two million two hundred seventy-three thousand four hundred sixty-five dollars and twenty-nine cents (\$2,273,465.29).

Payment of the award shall not be construed to have divested Claimant herein, or the Government of the United States on Claimant's behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

Dated at Washington, D.C.
June 9, 1959.

FINAL DECISION

The Commission issued its Proposed Decision on the above captioned claim on June 9, 1959, in which an award was granted

to Claimant under Section 305(a) (2) of the International Claims Settlement Act of 1949, as amended, in the principal amount of \$3,543,067.51, plus interest thereon in the amount of \$2,273,465.29.

A copy of the Proposed Decision was duly served upon counsel for Claimant who filed objections solely to that portion thereof which denied the claim based on ruble deposits with the former State Bank of Russia (Claimant's Schedule H).

General notice of the Proposed Decision has been given by posting for 30 days.

Due consideration having been given to Claimant's objections, the Commission finds that Claimant sustained a net loss in the principal amount of \$1,866,104.31, in connection with transactions involving rubles deposited by Claimant's customers with Claimant's former Russian Branches and rubles deposited by Claimant with the former State Bank of Russia. It is therefore

ORDERED that the Proposed Decision be and the same is hereby amended by increasing the principal amount of the award by \$1,866,104.31, together with interest thereon at the rate of 6% per annum from December 28, 1917 to November 16, 1933, in the amount of \$1,778,397.40; and it is

FURTHER ORDERED that in all other respects the Proposed Decision be and the same is hereby affirmed, and that the award granted in the Proposed Decision be and the same is hereby restated as follows:

AWARD

On the above evidence and grounds and upon the entire record an award is hereby made under Section 305(a) (2) of the Act, to THE FIRST NATIONAL CITY BANK OF NEW YORK, Claimant herein, in the principal amount of five million four hundred nine thousand one hundred seventy-one dollars and eighty-two cents (\$5,409,171.82) plus interest in the amount of four million fifty-one thousand eight hundred sixty-two dollars and sixty-nine cents (\$4,051,862.69).

Payment of the award shall not be construed to have divested Claimant herein, or the Government of the United States on Claimant's behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

ORDERED that the award granted pursuant hereto be certified to the Secretary of the Treasury.

Dated at Washington, D.C.

July 20, 1959.

Creditor claims under Section 305.—In the instant claim the Commission distinguished the claims of creditors under Section 305 from those of creditors under Section 303 of the Act. As to the latter, Section 303(3) had specified certain types of claims based upon debts which were to be received and determined by the Commission; and in the *Claim of European Mortgage Series B Corporation*, appearing at page 259, the Commission held that debt claims against Bulgaria, Hungary, or Rumania could be considered only under Section 303(3), and not under Sections 303(1) or (2)—that is, the inclusion of certain specified types of debt claim in Section 303(3) operated to exclude any other types of debt claim from consideration under Section 303 of the Act. The general language of Section 305, on the other hand, with no selective or restrictive language as to debt claims, was sufficiently broad to include any such claims found valid under “applicable substantive law, including international law.” While mindful of the general rule of international law that claims based upon a single default in the payment of obligations do not warrant interposition of a state, the Commission nevertheless found the actions of the Soviet Government with respect to debts owed to United States nationals to be such as amounted to repudiation and vitiation of the contract, giving rise to claims under international law.

Bonds.—With respect to bonds and other securities which had been issued by the Imperial Russian Government in United States currency, the repudiation was clear and formal. On February 10, 1918 the Soviet Government annulled all state loans of Russian predecessor governments and all foreign loans without exception. In 1918 and 1919 certain funds were still available in banks in the United States which serviced Russian bonds, and some interest payments were made by these banks to American bondholders after the repudiation of the bonds. Accordingly, in the instant claim, the award included the principal amount of 5% Dollar Treasury Notes, 5½% Five Year Dollar Bonds, and Participation Certificates in 6½% Three Year Credit Obligations held by claimant on February 10, 1918 when all were repudiated, but included interest only from November 1, 1919 on the first two and from July 10, 1919 on the third, inasmuch as interest due on those dates had been paid from the funds available in the United States. In a claim based upon bonds as to which interest had been paid until June 1, 1919, the award included the principal amount of the bonds held by claimant as of February 10, 1918, plus interest from June 1, 1919. (*Claim of Andrew H. Allen*, Claim No. SOV-40226, Dec. No. SOV-1438, 10 FCSC Semiann. Rep. 181 (Jan.-June 1959).) Awards likewise were made in claims based upon Russian Government bonds expressed in rubles rather than dollars, also repudiated on February 10, 1918. (*Claim of Charles D. Siegel*, Claim No. SOV-40017, Dec. No. SOV-230, 10 FCSC Semiann. Rep. 187 (Jan.-June 1959).)

Bonds issued by private enterprises, with payment of principal and interest guaranteed by the Imperial Russian Government, also were found compensable under Section 305 of the Act by reason of the repudiation of February 10, 1918, as in the case of a bond issue of the Wladikawkas Railway Company. (*Claim of Susan Erskine Rogers*, Claim No. SOV-40208, Dec. No. SOV-1437, 10 FCSC Semiann. Rep. 180 (Jan.-June 1959).) In view

of the definition of "Soviet Government" in Section 301(5) of the Act as "the Union of Soviet Socialist Republics, including any of its present or former constituent republics, other political subdivisions, and any territories thereof, as constituted on or prior to November 16, 1933," bonds issued by municipal authorities under the Imperial Government of Russia were the subject of awards, whether or not guaranteed by the Imperial Government, as in the case of 5% Bonds of the City of Kharkov, Russia, 1903. (*Claim of Sergius Martin Riis*, Claim No. SOV-40695, Dec. No. SOV-960, 10 FCSC Semiann. Rep. 200 (Jan.-June 1959).)

Some claimants presented to the Commission interest coupons which had been detached from bonds, some of them payable prior to February 10, 1918, the date of repudiation, and some payable after that date. The Commission held that such detached coupons may be the subject of compensable claims if due and payable before February 10, 1918; but that coupons payable after repudiation are not compensable inasmuch as the repudiation gave rise to claims against the Soviet Government by bondholders for the face amount of the bonds and for interest on the awards from February 10, 1918, but not for interest coupons due and payable after February 10, 1918 when, in effect, the principal amount became due and payable. (*Claim of Herman Allen*, Claim No. SOV-42079, Dec. No. SOV-3015, 10 FCSC Semiann. Rep. 220 (Jan.-June 1959); and *Claim of Peyton Randolph Harris*, Claim No. SOV-41840, Dec. No. SOV-2975, 10 FCSC Semiann. Rep. 216 (Jan.-June 1959).)

A claimant who had sold his bonds at a loss during the period between the Russian revolution and the filing of the claim, sought compensation for such loss. The Commission held that when claimant sold his bonds he transferred all his rights therein to the purchaser, including any claim for loss in connection with the bonds, and denied the claim. (*Claim of Carl Joseph Baird*, Claim No. SOV-40744, Dec. No. SOV-1939, 10 FCSC Semiann. Rep. 193 (Jan.-June 1959).)

Bank deposits.—Many claims were filed under Section 305 of the 1949 Act based upon losses sustained in connection with money on deposit in Russian banks. The Commission found that on December 27, 1917 the Soviet Government nationalized all Russian banks without compensation and declared the banking business to be a state monopoly; and that on December 28, 1917 such severe restrictions were imposed upon withdrawals from bank accounts as to prevent depositors residing outside of Russia and holders of larger deposits in general from withdrawing funds. This action was deemed to be a taking of the bank accounts on December 28, 1917 and was the basis for awards. (*Claim of Allis-Chalmers Manufacturing Company*, Claim No. SOV-41857, Dec. No. SOV-2476, 10 FCSC Semiann. Rep. 209 (Jan.-June 1959).) One claimant had 156,124 rubles on deposit with the Petrograd branch of the National City Bank of New York. Branches of this bank, being foreign-owned, were not included in the nationalization decree of December 27, 1917, and were not liquidated until a later date. Nevertheless, the restrictions imposed on December 28, 1917 had the same effect on these branches as on nationalized Russian banks. The National City Bank of New York was unable to withdraw its funds on deposit with the

Russian State Bank, and consequently could not have honored requests for withdrawal from any persons having deposits in its Russian branches as may have been able to secure permission for withdrawals under the governmental restrictions. In these circumstances, the Commission found that claimant's ruble deposit had been taken by the Soviet Government on December 28, 1917, and made an award for the dollar value thereof at that time. (*Claim of The Tanglefoot Company*, Claim No. SOV-41795, Dec. No. SOV-2935, 10 FCSC Semiann. Rep. 223 (Jan.-June 1959).) Conversely, a portion of the instant *First National City Bank of New York* claim, based upon deposits made by claimant in Russian banks in the names of some of its own customers, was denied in the Proposed Decision, the Commission finding that the persons in whose names the deposits stood were the proper parties claimant. However, when claimant established that it was responsible to its customers for their losses, so that claimant itself suffered the loss due to the taking of the deposits, an award for this portion of the claim was included in the Final Decision.

Other obligations.—In addition to claims based upon bonds and bank accounts, many claims were filed under Section 305 of the 1949 Act by creditor claimants based upon contractual obligations of Russian nationals or of the Russian Government itself. On July 30, 1919 the Soviet Government issued a decree annulling all claims upon the state "in connection with the Imperialist War of 1914-1918." A claimant who had shipped telephonic equipment to Russia during World War I under a contract with the Russian Government, and who had not received full payment therefor because of certain deductions which the Commission found to have been improperly made by the Russian Government under the terms of the contract, received an award for its loss due to the annulment of its claim. (*Claim of Western Electric Company, Inc.*, Claim No. SOV-40204, Dec. No. SOV-3117, 10 FCSC Semiann. Rep. 229 (Jan.-June 1959).) In another claim based upon a wartime shipment of cargo to Russia, claimant had obtained a judgment on March 20, 1918 for the amount due, against Nicholas Romanof, former Emperor of Russia. By decree of July 13, 1918 the Soviet Government nationalized all property of Nicholas Romanof without compensation. By reason of this decree and the decree of July 30, 1919 annulling claims against the state in connection with the war, claimant was found to have been barred from enforcing his legal rights against Nicholas Romanof individually and or against the Soviet Government as successor to the Imperial Russian Government and its sovereign, and an award was made under Section 305 of the Act. (*Claim of Frederick J. Henke*, Claim No. SOV-40409, Dec. No. SOV-6A, 10 FCSC Semiann. Rep. 207 (Jan.-June 1959).)

Other claimants received an award based upon the destruction of real property and confiscation of personal property by Russian troops during World War I. On September 26, 1914, Russian troops under the command of their officers entered Lutowska, then in Austria, and pillaged the town. They entered an inn by force and, although apprised that its owners were United States citizens, ransacked and destroyed the premises. The Commission found that the pillaging and destruction of the property did not result from an incident to the proper conduct of military opera-

tions and that the Russian Government, under the circumstances, was responsible for the action of its troops. The Soviet Government having decreed in July 1919 that "all claims against the state in connection with the Imperialist War of 1914-1918 shall be annulled," the Commission found the claim compensable under Section 305 of the 1949 Act and granted an award. (*Claim of Edward Eis, et al.*, Claim No. SOV-42185, Dec. No. SOV-3007, 10 FCSC Semiann. Rep. 219 (Jan.-June 1959).)

On March 7, 1919 the Soviet Government issued a decree annulling all debt claims against nationalized enterprises, exclusive of wages and bank accounts. This deprivation of the rights of creditors of private enterprises in Russia which had been nationalized, formed the basis for awards on claims based upon unsecured debts arising from many types of contractual obligation. One American bank discounted certain drafts drawn on a Russian corporation by an American supplier for goods shipped to Russia. The drafts were accepted by the Russian debtor but never paid, due to the nationalization of the enterprise and the annulment of its debts under the decree of March 7, 1919. The bank was unable to collect from the American supplier even though a judgment in favor of the bank against the supplier was entered in a court in the United States. The Commission held that the claimant bank's loss was attributable to the actions of the Soviet Government and that the bank was entitled to compensation under Section 305. (*Claim of National Shawmut Bank of Boston*, Claim No. SOV-40787, Dec. No. SOV-2799, 10 FCSC Semiann. Rep. 214 (Jan.-June 1959).)

In another claim, the record disclosed that a Russian bank held domestic bonds for the account of an American customer and that the Russian bank agreed to hold these securities as collateral for a loan granted by a New York bank to the American customer. As a result of the repudiation of the bonds by the Soviet Government, the New York bank lost the collateral and subsequently was unable to collect the loan from the customer. The Commission held that the loss was attributable to actions of the Soviet Government and compensation was granted to the New York bank. (*Claim of Guaranty Trust Company of New York*, Claim No. SOV-41460, Dec. No. SOV-3041, 10 FCSC Semiann. Rep. 224 (Jan.-June 1959).)

Claims based on drafts or bills of exchange drawn on Russian banks and sold by United States banks to their customers, which were never presented to the Russian banks for payment, were denied because such instruments did not operate as an assignment of funds unless and until the Russian banks accepted them for payment. Since the Russian banks did not become liable to the owners of the instruments, no liability for their nonpayment could be attributed to the Soviet Government. (*Claim of Charles B. Mergentime*, Claim No. SOV-41077, Dec. No. SOV-2848, 10 FCSC Semiann. Rep. 215 (Jan.-June 1959).)

A claim asserted for delivery of goods to the Kolchak Siberian Government which, between 1918 and 1920, temporarily controlled territory adjoining the Siberian railway, was denied because the Commission concluded that the counter-revolutionary government of Kolchak could not bind the Soviet Government which it sought to overthrow. (*Claim of Standard-Vacuum Oil*

Company, Claim No. SOV-41789, Dec. No. SOV-2977, 10 FCSC Semiann. Rep. 216 (Jan.-June 1959).)

One Russian company which was nationalized by the Soviet Government in 1918 continued operations on a smaller scale in London and New York. These operations were conducted under the management of executives whose authority had come from the company before its nationalization. There was no evidence that operations in the United States were conducted by authority of the Soviet Government. The company trading in New York under its Russian name incurred debts, and one creditor instituted suit and procured a judgment in a New York court. Not having been paid, he filed a claim under Section 305 of the Act. The Commission held that an obligation incurred subsequent to the nationalization of the enterprise, and without the authority or consent of the Soviet Government, did not form the basis of a compensable claim against the Soviet Government under Section 305 of the Act. (*Claim of John J. Pallay*, Claim No. SOV-40181, Dec. No. SOV-2, 10 FCSC Semiann. Rep. 202 (Jan.-June 1959).)

Award on claim acquired after it arose, limited to consideration paid.—Section 307 of the Act provided that the amount of any award based on a claim of a United States national other than the one to whom the claim originally accrued, shall not exceed the amount of the actual consideration paid therefor either prior to January 1, 1953, or between that date and the filing of the claim, whichever is less. This provision of the law was particularly important in claims based on securities which were freely traded at substantial discounts after their repudiation. It was because of this section of the law that the First National City Bank of New York, in the instant claim, was awarded \$435,000.00 plus interest on its 5% Dollar Treasury Notes in that face amount acquired before February 10, 1918, the date of repudiation, but only \$853,156.25, without interest, for similar notes in the face amount of \$6,525,000.00 which it had acquired for the lesser amount from other persons after the date of repudiation. Likewise its later-acquired 5½% Five Year Dollar Bonds in the face amount of \$951,000.00 were compensable only to the extent of \$90,727.50, the consideration paid therefor, and only \$65,000.00 was awarded for Participation Certificates in the total face amount of \$650,000.00. Another owner of such Participation Certificates in the face amount of \$9,000.00, purchased on January 8, 1916 for \$1,008.45, received an award in the latter amount. (*Claim of Bert McCord*, Claim No. SOV-40033, Dec. No. SOV-1493, 10 FCSC Semiann. Rep. 181 (Jan.-June 1959).) A claimant who purchased Participation Certificates in the total face amount of \$16,000.00 in 1938 and 1939 was unable to furnish evidence of the actual consideration paid. The Commission's investigation disclosed that the average cost of a \$1,000.00 Participation Certificate was \$6.25 in 1938 and \$4.06 in 1939, and in view of the lack of better evidence applied those figures in its calculation of the amount to which the award need be limited. (*Claim of Helen Modell*, Claim No. SOV-40836, Dec. No. SOV-2556, 10 FCSC Semiann. Rep. 201 (Jan.-June 1959).)

The First National City Bank claim also provides an example of the Commission's deduction from an award of any amounts owed or received by a claimant having the effect of reducing the

amount of the loss suffered. A total of \$2,126,487.54, representing amounts retained by the claimant from deposits of Russian enterprises and a sum awarded in a related claim before the Commission, was deducted from the principal amount of the award in the instant claim. The decision also discloses that the figure employed for calculation of awards based upon ruble bonds repudiated on February 10, 1918 was \$0.13 per ruble, the then prevailing rate of exchange. The same rate of exchange existed on December 28, 1917, the date of loss with respect to rubles on deposit in Russian banks, and was applied in calculating the awards in such claims. Certain 4% Imperial Russian Government Income Bonds, expressed in rubles, though repudiated on February 10, 1918 when the value of the ruble was \$0.13, bore a guaranteed exchange rate of \$0.5145 per ruble which was used in the calculation of awards based thereon. (*Claim of Harriet H. Grant*, Claim No. SOV-40093, Dec. No. SOV-680, 10 FCSC Semiann. Rep. 199 (Jan.-June 1959).) Russian currency is discussed in more detail in the annotations to *Claim of the Singer Manufacturing Company*, below.

In the Matter of the Claim of
**THE SINGER MANUFACTURING
 COMPANY**

Claim No. SOV-40920
 Decision No. SOV-3128

Against the Soviet Government

Claim based on taking by Soviet Government of Russian Treasury Bills in the nature of Russian currency, before devaluation thereof, recognized under Section 305.

Value of enterprise on June 29, 1918, date of nationalization, determined from balance sheet dated December 31, 1916, most recent available, with adjustments for depreciation and bad debts.

PROPOSED DECISION

This claim for \$100,096,398.41, under Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, is based upon the following:

| | |
|---|------------------|
| (1) Russian Government Treasury Bills and accounts in several Russian banks..... | \$39,349,620.39 |
| (2) Sole stockholder of Kompaniya Singer (hereinafter referred to as the "Russian Company") when it was nationalized by the Soviet Government | 60,746,778.02 |
| Total | \$100,096,398.41 |

From 1902 to 1913 the claimant (incorporated in New Jersey on February 20, 1873) directly owned 100% of the Russian Company; from 1913 to 1919 it indirectly owned that Company through a 100% ownership of the International Securities Com-

pany (New Jersey) and from 1919 it has directly owned all of the Russian Company. The claimant, The Singer Manufacturing Company, has been a national of the United States as defined in Section 301(2) (B) of the Act at all relevant times.

Because of the substantial values of the properties and the complexities involved in this claim, the various items thereof will be, for convenience and simplification, discussed in series in the following paragraphs of this Decision.

(1) Russian Government Treasury Bills and accounts in several Russian banks (claimed amount of \$39,349,620.39)

Claimant has submitted documentary evidence which shows it had Treasury Bills and accounts in various Russian Banks, as follows:

| Name of depository | Treasury notes at face value | Bank balances, rubles | Total in rubles |
|--|---------------------------------|--------------------------|--------------------|
| Petrograd Discount Bank--- | 1,550,000.00 | 589,482.50 | 2,139,482.50 |
| Azov-Don Commercial Bank, Moscow ----- | 10,730,000.00 | 640,509.95 | 11,370,509.95 |
| National City Bank of New York, Petrograd Branch-- | ----- | 20,823,644.50 | 20,823,644.50 |
| Russian Bank for Foreign Trade, Moscow ----- | 3,000,000.00 | 689,327.49 | 3,689,327.49 |
| Volga-Kama Commercial Bank, Moscow ----- | 6,775,000.00 | 663,916.56 | 7,438,916.56 |
| Moscow Merchants Bank---- | 7,000,000.00 | 749,751.23 | 7,749,751.23 |
| Russian and English Bank, Petrograd, Account of Douglas Alexander as Claimant's nominee ----- | ----- | 152,366.25 | 152,366.25 |
| Siberian Commercial Bank, Petrograd ----- | ----- | 1,543,861.21 | 1,543,861.21 |
| Petrograd International Commercial Bank ----- | ----- | 26,675.00 | 26,675.00 |
| Azov-Don Commercial Bank, Moscow, Account of the National Bank of Scotland as Claimant's nominee--- | 6,500,000.00 | 1,402,250.00 | 7,902,250.00 |
| Russian Asiatic Bank, Mos- cow, Account of National Bank of Scotland as Claim- ant's nominee ----- | 5,000,000.00 | 3,412,602.50 | 8,412,602.50 |
| Russian and English Bank, Petrograd, Account of Na- tional Bank of Scotland as Claimant's nominee ----- | ----- | 559,464.50 | 559,464.50 |
| American Consulate General, Moscow ----- | ----- | 4,665,000.00 | 4,665,000.00 |
| Rubles ----- | 40,555,000.00 | 35,918,851.69 | 76,473,851.69 |

These Treasury Bills were confiscated on December 27, 1917 when the seven (7) Russian Banks were nationalized by the Soviet Government and all of these bank accounts in the thirteen (13) Russian Banks were taken on December 28, 1917 except the last item of 4,665,000 rubles left with the American Consulate in early 1918 for deposit in Russian banks to the credit of the United States Government as a nominee of the claimant. As bank deposits were generally not confiscated by the Soviet Government after December 28, 1917 and as the claimant has not submitted evidence which shows that the account for 4,665,000 rubles was so confiscated, that part of this item based upon such account must be and hereby is denied. The claimant is entitled, therefore, to an award on this item of the claim as follows:

| Property | Amount in rubles | Date property taken | Exchange rate on date property taken | U.S. dollars |
|---------------------|------------------|---------------------|--------------------------------------|--------------|
| Treasury bills ---- | 40,555,000.00 | Dec. 27, 1917 | 13 cents-- | 5,272,150.00 |
| Bank accounts --- | 31,253,851.69 | Dec. 28, 1917 | 13 cents-- | 4,063,000.76 |
| Total ----- | 71,808,851.69 | ----- | ----- | 9,335,150.76 |

(2) *Sole stockholder of Kompaniya Singer when it was nationalized by the Soviet Government (claimed amount of \$60,746,778.02)*

Since 1913, the capital of the Russian Company has consisted of 50,000 shares, each with a par value of 1,000 rubles. The claimant states it has stock certificates in its possession for 49,979 shares of the Russian Company which it can produce. To the best of the claimant's knowledge, the certificates for the other 21 shares were in the vault of the Azoff Don Commercial Bank in Russia in 1917 and disappeared during the Russian Revolution. It is determined that the claimant owned 100% of the outstanding shares of stock of the Russian Company when it was nationalized on June 28, 1918.

It appears that the various properties of the Russian Company were taken "piece-meal" by the Soviet Government and it is impossible to assign any specific date to each category of property; therefore, it shall be assumed that it was nationalized in toto on June 28, 1918. Decree No. 168 of the Soviet of People's Commissars Regarding the Nationalization of the Largest . . . Metal Working . . . which became effective on the date of its signature on June 28 (15), 1918, provided that:

I. The industrial and commercial enterprises enumerated below, which are located within the borders of the Soviet Republic, together with all their capital and property

regardless of what the latter may consist, are declared the property of the Russian Socialist Federated Soviet Republic:

Metallurgical and Metal Working Industry:

- 9) All enterprises belonging to corporations and joint stock companies with a fixed capital of one million or more rubles, as well as all large enterprises, the total value of whose property according to the last balance sheet was one million or more rubles, and which are engaged in one or several of the following kinds of production: smelting of cast iron, iron and copper in the crude state; the obtaining therefrom of semi-worked products and the working of these semi-worked products by rolling, drawing, pressing and chemical treatment; the construction of machines of all types (engines, agricultural machines, etc.), aviation apparatus and mechanical vehicles; the construction of vessels, locomotives and cars, bridges and iron constructions; the making of instruments of precision; the making of fire-arms, machine guns, artillery and parts belonging thereto, the production of metal armature; the production of various kinds of metal-ware with the exception of air brakes. . . .

This Russian Company sold machines and parts therefor in every locality in Russia and owned the following properties:

- (1) The building in Petrograd which its home office occupied cost approximately 3 million rubles to build in 1906 when the ruble had an exchange value of 51.62 cents,
- (2) A factory in Podolsk which consisted of about 40 buildings and which produced about 400,000 "family" machines and a large number of special machines for the manufacturing trade each year,
- (3) A tract of timberland consisting of about 120,000 acres and known as Troitsky (Troitskaia) Tract,
- (4) A selling organization which covered all of Russia and consisted of the following:
 - (a) Fifty central agencies or district offices, each with a large warehouse to service the shops and salesmen in its district,
 - (b) 3,000 local shops or retail outlets,
 - (c) Tremendous inventories of merchandise, furniture and tools, and
 - (d) Approximately 27,500 employees in the sales organization in 1914.

The territory in which the Russian Company operated included that part of Poland which was within the Russian Empire as well as Finland and the Baltic areas of Estonia, Latvia and Lithuania. When the German armies advanced into Poland and

the Baltic states some of its property there was evacuated to interior Russia. The merchandise, furnishings, tools, outstanding accounts receivable and other assets which remained there were written off its books and are not a part of the properties for which this claim is made.

Neither the claimant nor the Commission has been able to obtain a Balance Sheet of the Russian Company dated subsequent to 1916; therefore, the Balance Sheet dated December 31, 1916 which was submitted by the claimant must be used to determine its net worth. In view of all the circumstances, it shall be assumed that the Russian Company had, with certain adjustments hereinafter described, substantially the same quantity of properties on hand on June 28, 1918 when it was nationalized by the Soviet Government as it did on December 31, 1916.

Because of the numerous categories of properties on the Balance Sheet of the Russian Company, the substantial amounts involved and the complexities of some of them, each one will be discussed individually in this and the succeeding paragraphs of this Decision.

Assets of the Russian Co.

| | <i>Rubles</i> |
|---|----------------|
| 1. Cash account: | |
| Cash at main office ----- | 8,820,659.31 |
| Government securities ----- | 2,016,400.00 |
| Cash in branches ----- | 154,634.55 |
| | <hr/> |
| Total shown on balance sheet of Dec. 31, 1916 ----- | 10,991,693.86 |
| Less: Deduction for cash in branches not taken by Soviet Government ----- | 14,732.65 |
| | <hr/> |
| Net cash account ----- | 10,976,961.21 |
| | <hr/> |
| 2. Deposits with State institutions: Deposits with State institutions, electrical, gas, and water companies, as shown by balance sheet of Dec. 31, 1916 ----- | 12,092.19 |
| | <hr/> |
| (As these receivables were from State institutions, no deduction has been made therefrom for bad debts.) | |
| 3. Real property at Nevsky Prospect in Petrograd: | |
| Balance sheet of Dec. 31, 1915 ----- | 1,064,140.81 |
| Less: Depreciation at 5 percent on 2,100,394.87 for 1916 ----- | 105,019.74 |
| | <hr/> |
| Net value as shown on balance sheet of Dec. 31, 1916 ----- | 959,121.07 |
| Less: Depreciation at 5 percent per annum for 1917 and first 6 months of 1918 ----- | 157,529.61 |
| | <hr/> |
| Net value on June 28, 1918 ----- | 801,591.44 |

The claimant contends that the net book value on December 31, 1916 of 959,121.07 rubles did not reflect the true value of the property on that date and offers the following reasons for its statement:

(a) The building was insured in 1917 for 2,100,394.87 rubles which, of course, did not include the value of the land,

(b) In 1913, the Russian Company received a bona fide offer of 3,500,000 rubles for the property but the owner's asking price was 4,000,000; therefore, the realty had a true value at that time of 3,750,000 rubles, and

(c) The Russian Company had consistently used a depreciation rate on the property of 5% per annum which should be adjusted to 2½% from the time of construction of the building in 1906, which adjustment would result in a net value of the property of 2,478,194.93 rubles on December 31, 1916.

The amount of fire insurance on a structure is not, in the absence of corroboration, a conclusive test of its value. There is some doubt that a firm offer of 3,500,000 rubles was ever received by the Russian Company for this particular property. As the Russian Company used a rate of 5% which must be assumed to have been an accepted rate and the Balance Sheet reflects a particular amount, it is determined that the adjusted book value of 801,591.44 rubles must be considered as the fair value of the property on June 28, 1918.

4. Land and buildings of factory at Podolsk:

| | <i>Rubles</i> |
|---|---------------------|
| Balance Sheet of December 31, 1915 ----- | 5,496,391.35 |
| Additions to land and buildings during 1916 ----- | 807,378.28 |
| Total ----- | 6,303,769.63 |
| Less: Depreciation at 5 percent on 7,034,973.34 for 1916 ----- | 351,748.67 |
| Net value as shown by balance sheet of Dec. 31, 1916 ----- | 5,952,020.96 |
| Less: Depreciation at 5 percent per annum for 1917 and first 6 months of 1918 ----- | 527,623.01 |
| Net value on June 28, 1918 ----- | 5,424,397.95 |

The claimant alleges that the net book value on December 31, 1916 of 5,952,020.96 rubles did not reflect the true value of the property on that date and cites the following reasons:

(a) The buildings alone were insured against fire in 1917 for the amount of 7,034,973.34 rubles,

(b) The Russian Company had consistently used a depreciation rate of 5% per annum which should be adjusted to 2½% from the time of the construction dates of the various buildings of the factory,

(c) 378,433.81 of a total of 869,176.15 rubles spent for new construction was written off to expense rather than capitalized, and

(d) A substantial increase in the actual market value of the factory land was not reflected in the accounts of the Russian Company.

As was explained in the preceding section, the amount of fire insurance is not conclusive as to the value of the property insured. The sug-

gested adjustment for the rate of depreciation should also be rejected for the reasons specified in the preceding section. With regard to the suggested adjustments because an expenditure was allegedly shown as an expense rather than capitalized and because the accounts did not reflect the prevailing market value of the land, it is concluded that the values shown by the balance sheet provide a proper basis for valuation; accordingly, it is determined that the value of this property was 5,424,-397.95 rubles on June 28, 1918.

5. Inventory and other personalty at Podolsk factory:

| | <i>Rubles</i> |
|--|---------------|
| (a) Cash ----- | 480,957.39 |
| (b) Tools and machinery: | |
| Dec. 31, 1916 (net) ----- | 2,172,663.35 |
| As 20 percent depreciation taken in 1916, none should be taken for the year 1917 but only for 6 months of 1918 ----- | 229,341.99 |
| Net value on June 28, 1918 ----- | 1,943,321.36 |
| (c) Accounts receivable: | |
| Net receivables on Dec. 31, 1916, after bad debt deduction ----- | 1,836,422.86 |
| Plus: Bad debt deduction for 1916 ----- | 118,748.53 |
| Total ----- | 1,955,171.39 |
| Less: 40 percent ----- | 782,068.56 |
| Net accounts receivable ----- | 1,173,102.83 |
| Less: Accounts payable ----- | 362,217.03 |
| Net ----- | 810,885.80 |
| (d) Loan account: | |
| Gross (61,579.05+950.87) ----- | 62,529.92 |
| Less: 40 percent ----- | 25,011.97 |
| Net ----- | 37,517.95 |
| (e) Troitskaia (Troitsky tract): | |
| (1) Cash ----- | 25,140.15 |
| (2) Inventory ----- | 433,162.28 |
| (3) Buildings and equipment: | |
| Book value on Dec. 31, 1916 ----- | 230,231.14 |
| Less: Depreciation at 5 percent per annum for 1917 and 6 months of 1918 ----- | 17,267.00 |
| Depreciation value on June 28, 1918 ----- | 212,964.14 |
| (f) Inventory ----- | 19,203,134.38 |

6. Tract of timberland (Troitsky):

| | |
|----------------------|-------------------------------|
| Cost ----- | <i>Rubles</i> 2,350,000.00 |
| Less: Stumpage ----- | 282,250.00 |
| Net ----- | <u>2,067,750.00</u> |

7. Furniture and tools in the selling organization:

| | |
|---|-------------------|
| Balance sheet of Dec. 31, 1915 ----- | 475,675.08 |
| Acquired in 1916 ----- | 5,931.29 |
| Subtotal ----- | <u>481,606.37</u> |
| Loss by fire and theft in 1916 ----- | 502.44 |
| Subtotal ----- | <u>481,103.93</u> |
| Less: Depreciation at 10 percent on 830,361.60 for 1916 ----- | 83,036.16 |
| Net value on Dec. 31, 1916 ----- | <u>398,067.77</u> |
| Less: Depreciation at 10 percent per annum for 1917 and first 6 months of 1918 ----- | <u>124,554.24</u> |
| Net value on June 28, 1918 ----- | <u>273,513.53</u> |

The claimant has informed the Commission that the amount of 398,067.77 rubles as shown on the Balance Sheet of December 31, 1916 for furniture and tools is after annual deductions for depreciation of 10% and reflects only special or extraordinary expenditures for equipment consisting of special tools, gauges used in the warehouses, motor vans, the furniture and equipment in the office building at No. 28 Nevsky Prospect in Petrograd and the main office at Moscow, and some of the more elaborate furnishings and equipment located in various of the central agency premises. It is alleged that the extreme undervaluation of these assets is shown by the fact that the furniture and tools in the main office in Moscow and in the other offices of the Russian Company were valued for fire insurance purposes in 1917 at 1,233,289.67 rubles.

The claimant has explained that it was the policy of the Russian Company to write off to expense at the time of their purchase the cost of the customary furnishings, fixtures, tools and equipment placed in its shops, offices and warehouses. This policy was allegedly followed by the Russian Company in equipping the more than 3,000 shops, the 50 central agencies and the 50 warehouses which comprised its selling organization. The equipment of the average shop in Russia included a safe, two or more desks, one or more tables, a cabinet for storing sewing machine parts, six or eight chairs, carpets or rugs, work benches, tools and other miscellaneous furnishings, fixtures, tools and equipment which ranged from 1,000 to 2,000 rubles for each of the smaller shops to several thousand rubles for each of the larger shops.

The claimant contends that such furnishings, tools and equipment at the shops, central agencies, warehouses, office building and main office had a depreciated or net value of 6,000,000 rubles when the Soviet Government nationalized the Russian Company.

It is determined that depreciated or net value of these properties of 273,513.53 rubles was the fair value of this property on June 28, 1918.

8. Merchandise in selling organization:

| | <i>Rubles</i> |
|--|---------------|
| Total merchandise on hand ----- | 12,057,149.89 |
| Less: Merchandise taken by other than the Soviet Government ----- | 166,388.00 |
| Net ----- | 11,890,761.89 |

9. Installment and other accounts receivable:

Although the balance sheet of Dec. 31, 1916 for the Russian Co. shows a total of 61,592,096.34 rubles, the claimant has adjusted this item to 50,822,406.74 rubles, as follows:

| | |
|---|---------------|
| Installments ----- | 61,541,083.44 |
| Less: 17½ percent collection expenses ----- | 10,769,689.60 |
| Total ----- | 50,771,393.84 |
| Plus open accounts ----- | 51,012.90 |
| Adjusted amount ----- | 50,822,406.74 |

No consideration for bad debts was given in the foregoing adjustment; however, accounts receivable are, under normal conditions and general business practices, subject to a proper deduction for bad debts. Conditions that prevailed in Russia at the time the amount in question came into being were not normal but rather "abnormal" due to World War I development and its aftermath. Also, claimant has not submitted persuasive evidence that receivables in the amount claimed were actually in existence on June 28, 1918. It is determined that in view of the foregoing, a deduction of 40% of such accounts should be made. The following calculation is made to reflect a deduction therefor and the adjusted amount of 33,504,569.35 rubles, as shown below, is determined to be the net value of such receivables on June 28, 1918:

| | <i>Rubles</i> |
|---|---------------|
| Gross receivables on Dec. 31, 1916 ----- | 67,685,998.69 |
| Less: 40 percent ----- | 27,074,399.48 |
| Total ----- | 40,611,599.21 |
| Less: Collection costs of 17½ percent ----- | 7,107,029.86 |
| Net ----- | 33,504,569.35 |

10. Land and building in Irkutsk, Siberia:

This property with a value of \$113,201.00 was taken by the Soviet Government when it acquired jurisdiction on February 1, 1920 over that part of Russia.

RECAPITULATION OF ASSETS OF THE RUSSIAN CO.

| Property | Value in rubles | Exchange rate used converting rubles to dollars (cents) | Value in U.S. dollars |
|--|--------------------|--|--------------------------|
| 1. Cash account ----- | 10,976,961.21 | 14 | 1,536,774.54 |
| 2. Deposits with State institu- tions ----- | 12,092.19 | 14 | 1,692.91 |
| 3. Real property at Nevsky prospect ----- | 801,591.44 | 51.62 | 413,781.50 |
| 4. Land and buildings at fac- tory at Podolsk ----- | 5,424,397.95 | 51.62 | 2,800,074.20 |
| 5. Inventory and other property at Podolsk factory: | | | |
| Cash ----- | 480,957.39 | 14 | 67,334.03 |
| Tools and machinery --- | 1,943,321.36 | 51.62 | 1,003,142.51 |
| Accounts receivable ---- | 810,885.80 | 14 | 113,524.01 |
| Loan account ----- | 37,517.95 | 14 | 5,252.51 |
| Troitskaia tract: | | | |
| Cash ----- | 25,140.15 | 14 | 3,519.62 |
| Inventory ----- | 433,162.28 | ¹ 30 | 129,948.68 |
| Buildings and equip- ment ----- | 212,964.14 | 51.62 | 109,932.09 |
| Inventory ----- | 19,203,134.38 | ¹ 30 | 5,760,940.31 |
| 6. Troitsky tract (prewar) ---- | 2,067,750.00 | 51.62 | 1,067,372.55 |
| 7. Furniture and fixtures (pre- war) ----- | 273,513.53 | 51.62 | 141,187.68 |
| 8. Merchandise in selling orga- nization ----- | 11,890,761.89 | ¹ 30 | 3,567,228.57 |
| 9. Installment and other receiv- ables ----- | 33,504,569.35 | 14 | 4,690,639.71 |
| 10. Land and buildings in Irkutsk, Siberia ----- | | | 113,201.00 |
| Value of assets ----- | | | 21,525,546.42 |
| Less: | | | |
| (1) Liability of Employee's Guarantee Fund (4,336.45 ×14¢) ----- | | | 607.10 |
| (2) Transfer of assets to Finnish Branch ----- | | | 100,110.55 |
| (3) Reduction of assets shown on Balance Sheet of Dec. 31, 1916 to decrease liabilities to claimant (16,765,444.89 rubles×14¢) ----- | | | 2,347,162.28 |
| Total deductions ----- | | | 2,447,879.93 |
| Value of Russian Co. without deduction of payables due to claimant on June 28, 1918 of \$25,787,207.85 and 9,641,152 rubles---- | | | 19,077,666.49 |

¹ As it is impossible to ascertain the exact exchange rate which should be applied to each of the various inventories of merchandise valued in rubles, it is determined that an overall average of 30 cents per ruble is a fair and reasonable rate.

Because of the unusual nature of the above-noted deduction of 16,765,444.89 rubles, this item will be explained in some detail. The claimant was the sole owner of the Russian Company and on December 31, 1916 that Company was indebted to it in the amount of \$31,967,918.58 for merchandise purchases payable in United States dollars and 9,641,152 rubles for payment of royalties payable in rubles. According to the claimant, the Russian Company's indebtedness to it on June 28, 1918 was in the amount of \$25,787,207.86 and 9,641,152 rubles, or a decrease of \$6,180,710.72 from December 31, 1916 to June 28, 1918. As partial payments by the Russian Company of its indebtedness to the claimant could not be forwarded to the claimant because funds could not be sent out of Russia, such funds were deposited in Russian banks for the account of the claimant or used to purchase Treasury Notes for the claimant. That the Russian Company reduced its indebtedness to the claimant by \$6,180,710.72 is confirmed by an increase in exactly that amount (\$19,945,774.14 on December 31, 1918 and \$13,765,063.42 on December 31, 1916) of the bank accounts and Treasury Notes of the claimant in various Russian banks.

The sum of \$6,180,710.72 has been determined to be the equivalent of 16,765,444.89 rubles in the following manner: Claimant has submitted a photocopy of its letter of February 25, 1921 to the Commissioner of Internal Revenue which contains the following statement—

Prior to the outbreak of the European war, transactions between The Singer Manufacturing Company and Kompania Singer, the Russian corporation, were upon a basis of 51.2 cents per ruble. When deposits were made by the Russian company to the credit of The Singer Manufacturing Company in 1915 and later, credit was given to the Russian company on the account current at 40. This practice obtained until the latter part of 1917 when the Russian company was credited at 30. At the time that the rate was agreed upon, it approximated the then rate of exchange and was considered a fair settlement to The Singer Manufacturing Company because the Russian company was rapidly losing money on account of war conditions, and it was considered an advantage to The Singer Manufacturing Company to get as many deposits in the Russian banks as possible rather than a mere indebtedness against a failing company.

According to the claimant, its bank accounts and Treasury Notes in Russia were \$13,765,063.42, \$19,904,142.07 and \$19,945,774.14 on December 31, 1916, December 31, 1917 and December 31, 1918, respectively; therefore, there was an increase of \$6,139,078.65 during the year 1917 and an increase of \$41,632.07 during 1918. The aforesaid statement is to the effect

that the Russian Company was given credit for such deposits at a rate of 40 cents per ruble until the latter part of 1917 and 30 cents thereafter. On this basis the amount of 16,765,444.89 rubles was computed as follows:

$$\begin{aligned} \$6,139,078.65 \times \frac{3}{4} &= \$4,604,308.99 : 40c = 11,510,772.45 \text{ rubles} \\ \$6,139,078.65 \times \frac{1}{4} &= \$1,534,769.66 : 30c = 5,115,898.87 \text{ rubles} \\ \$41,632.07 \div 30c &= 138,773.57 \text{ rubles} \end{aligned}$$

Total ----- 16,765,444.89 rubles

The claimant stated in its letters of December 17, 1958 and May 25, 1959 that this reduction of the Russian Company's liabilities to the claimant during 1917 and 1918 was made for profits, savings gained from reducing its expenses and the recovery of assets not included in its 1916 Balance Sheet; therefore, such payments were made without any diminution of the assets of the Russian Company shown in that financial statement.

This argument is not persuasive in view of the fact that the Russian Company suffered total losses of 17,265,509.77 rubles during the years 1914, 1915 and 1916 and numerous documents submitted by the claimant contain statements that the Russian Company was in serious financial condition subsequent to 1916. Some of the more revealing of these documents are:

- (1) Page 7 of the Minutes of the General Meeting of the Shareholders of the Russian Company held May 27 to June 9, 1917 contains the following statement:

With constantly increasing expenses, the Board fears a new loss for the year 1917 unless the business conditions take a turn for the better before the end of the year. Further losses may result in such complications in the already unfavorable financial position of the Company as to bring forward the question of fundamental changes in its methods of conducting business, as the sales of machines through its own shops owing to the very high expenses may become impossible.

- (2) Memorandum by Board of Directors of The Singer Company, Moscow, dated August 21, 1917 entitled "The Reasons Compelling The Singer Company to Discontinue its Business" contains the following statements:

- (a) The steady exhaustion of its stocks of goods, the impossibility of replenishing them by the output of the Podolsk Factory or by importation from either America or Great Britain, owing to lack of foreign exchange and shortage of tonnage, all combined to render it imperative to constantly reduce the Company's operations.

- (b) The stockholders after suffering losses of over 17,000,000 rubles during the three years of the war, losses that exceed the profits of the Company during the whole period of its existence and which continue to increase, have given instructions to close the factory and to cease all commercial operations.
- (c) The Board of Directors of The Singer Company inform you that owing to the losses sustained by the Company during the three years of the war amounting to over 17 million rubles, and to the loss of each month of some hundreds of thousands of rubles on the operations of its Podolsk, Moscow Government, Factory it finds itself on the brink of bankruptcy and is compelled to close its Factory, which is working for the National Defense, and also the whole of its commercial business until better conditions prevail.

As the claimant was the sole stockholder of the Russian Company and it was a creditor of that Company in the amount of \$25,787,207.86 and 9,641,152 rubles, its claim was as an owner and creditor. The claimant stated in its letter of May 25, 1959 that it would be appropriate to make an award to it as an owner of the Russian Company rather than as a creditor or a combination thereof. As creditors have a priority over owners in the distribution of assets of a corporation, it is appropriate that any award be made to the claimant first as a creditor with any excess to be paid to it as an owner. The question presented, therefore, is whether such a "creditor claim" is compensable under Section 305 (a) (2) of the Act.

"Creditor claims" were considered by the Commission with specific reference to Section 303 (*Claim of European Mortgage Series B Corporation*, Claim No. HUNG-22020, Dec. No. HUNG-1605). It was there held, by majority opinion, that in the light of legislative history and background and the language of Section 303 (which relates to claims against the Governments of Hungary, Rumania and Bulgaria), the only "creditor claims" which come within the purview of Section 303 are those which fall within the narrow confines of subsection 3 thereof. It was, however, pointed out in that decision that:

It is not intended to find that a creditor claimant could under no circumstances show himself entitled to recover, particularly under a statute with different background, history and language. . . .

The background, history and language of Section 305 differ materially from that of Section 303 which follows an exclusionary pattern listing three specific classes of claims to be compensated.

Section 305, on the other hand, contains no similar restrictions as to the type and scope of claims which may constitute the basis of an award against the Soviet Government.

Section 305(a) (2) of the Act provides:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts . . . of claims arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

When the Russian Company was nationalized (June 28, 1918) it became a Soviet State enterprise. No provision was made by that Government for the payment of compensation for the seized assets.

The rights and remedies of creditors were for all intents and purposes completely extinguished by the Soviet decree dated March 4, 1919 and published on March 7, 1919 which, *inter alia*, provided that:

State enterprises are freed from the payment of all debts to private persons and enterprises including payment on bond loans, with the exception only of wages due to their workers and employees.

No court or other tribunal was made available by the Soviet Government to creditors of the nationalized enterprises, secured or unsecured, for fixing and payment of their damage and loss.

It is determined that the conduct of the Soviet Government, recited above, constituted not only a denial of justice, but an outright repudiation of its own obligation, and that by reason thereof claimant has a valid claim under Section 305(a) (2) of the Act for such debt claim. That part of such debt in the amount of 9,641,152 rubles had a value equivalent to \$1,373,864.16 as the ruble was worth 14.25 cents on March 7, 1919. This amount of \$1,373,864.16 plus \$25,787,207.86 would be a total credit claim of \$27,161,072.02 which would exceed the net value of \$19,077,666.49 of the Russian Company. The claimant is entitled, therefore, to an award of \$19,077,666.49 as a creditor of the Russian Company.

AWARD

On the above evidence and grounds, an award is hereby made to THE SINGER MANUFACTURING COMPANY, claimant herein, in the amount of twenty-eight million four hundred twelve thousand eight hundred seventeen dollars and twenty-five cents (\$28,412,817.25), plus interest at 6% per annum from the dates of confiscation or annulment of each category of property to November 16, 1933 in the amount of twenty-five million seven hundred fourteen thousand two hundred fifty-seven dollars and ninety-nine cents (\$25,714,257.99), as shown below:

| Property | Amount of award | Date claim arose | Amount of interest |
|------------------------------|--------------------|---------------------|-----------------------|
| Treasury bills ----- | \$5,272,150.00 | Dec. 27, 1917 | \$5,025,255.22 |
| Bank accounts ----- | 4,063,000.76 | Dec. 28, 1917 | 3,872,039.76 |
| Creditor of Russian Co. ---- | 19,077,666.49 | Mar. 7, 1919 | 16,816,963.01 |
| Total principal ----- | \$28,412,817.25 | | ----- |
| Total interest ----- | | | \$25,714,257.99 |

No determination is made with respect to interest for any period subsequent to November 16, 1933.

Payment of the award herein shall not be construed to have divested claimant herein, or the Government of the United States on its behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

Dated at Washington, D.C.

June 19, 1959.

FINAL DECISION

The Commission, by Proposed Decision dated June 19, 1959, entered an award in the amount of \$28,412,817.25 with interest thereon of \$25,714,257.99. The claimant filed objections to the Proposed Decision and requested an oral hearing before the Commission for the purpose of presenting additional evidence and argument in support of the claim.

A hearing was scheduled for July 10, 1959 and held on that date. Claimant presented additional evidence and oral argument in support of its four objections to the Proposed Decision. Based upon such evidence, the Commission determines that:

- (1) The real property on Nevsky Prospect in Petrograd had a value of \$700,000 when it was taken by the Soviet Government on June 28, 1918 and not \$413,781.50 as shown in the Proposed Decision,
- (2) The value of the land and buildings of the factory at Podolsk was \$3,600,000 on June 28, 1918 instead of \$2,800,074.20 as reflected in the Proposed Decision,
- (3) On June 28, 1918 the furniture, fixtures and tools in the selling organization had a value of \$200,000 rather than that of \$141,187.68 as recorded in the Proposed Decision,
- (4) The evidence submitted and argument made by the claimant, in support of its objection that the deductions of 40% and 17½% from the installment and

other receivables were unreasonable, are not persuasive. There is, however, an adjustment to be made in the amount of the award made on such receivables. Open or unsecured accounts receivable in the gross amount of 51,012.90 rubles were inadvertently omitted in calculating the award of \$4,690,639.71 on this item. This amount of 51,012.90 less the deductions of 40% and 17½% result in a net of 25,251.39 rubles which is equivalent to \$3,535.19. The award on these installment and other receivables will be increased, therefore, from \$4,690,639.71 to \$4,694,174.90, and

- (5) In view of the foregoing adjustments, the net worth of the Russian Company on June 28, 1918 will be increased from \$19,077,666.49, as shown in the Proposed Decision, to \$20,226,153.30.

General notice of the Proposed Decision having been given by posting for thirty days, it is hereby

ORDERED that the Commission's Proposed Decision dated June 19, 1959, with the foregoing additions thereto and amendments thereof, and the increase in the amount of the award as shown below, be affirmed in all other respects and entered as the Commission's Final Decision:

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to THE SINGER MANUFACTURING COMPANY, claimant herein, in the amount of twenty-nine million five hundred sixty-one thousand three hundred nine dollars and six cents (\$29,561,309.06), plus interest thereon at the rate of 6% per annum from the dates of confiscation or annulment of each category of property to November 16, 1933 in the amount of twenty-six million seven hundred twenty-six thousand six hundred fifty-three dollars and fifty-two cents (\$26,726,653.52), as shown below:

| Property | Amount of award | Date claim arose | Amount of interest |
|------------------------------|--------------------|---------------------|-----------------------|
| Treasury bills _____ | \$5,272,150.00 | Dec. 27, 1917 | \$5,025,255.22 |
| Bank accounts ----- | 4,063,000.76 | Dec. 28, 1917 | 3,872,039.76 |
| Creditor of Russian Co. ____ | 20,226,158.30 | Mar. 7, 1919 | 17,829,358.54 |
| Total principal | \$29,561,309.06 | | |
| Total interest | | | \$26,726,653.52 |

No determination is made with respect to interest for any period subsequent to November 16, 1933.

Payment of the award herein shall not be construed to have divested claimant herein, or the Government of the United States on its behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim. It is further

ORDERED that the award granted pursuant to this Final Decision be certified to the Secretary of the Treasury.

Dated at Washington, D.C.

July 20, 1959.

Russian currency.—A large part of the loss sustained by creditors of Russian nationals was caused by depreciation of the Russian currency. The results of the Commission's research concerning the history and value of the ruble was set forth in Panel Opinion No. 44 of January 15, 1957, summarized below.

The pre-World War I rate of exchange for the gold ruble was 51.45½ United States cents for one ruble. Immediately after the outbreak of World War I (July 27, 1914) the Russian Government suspended the obligation of the Russian State Bank to redeem its notes in gold. Thereafter the exchange rate of the ruble showed a declining trend on European and foreign markets. The official monthly average exchange rates of the ruble on Moscow bankers' sight drafts on New York expressed in United States cents were as follows:

| | 1914 | 1915 | 1916 | 1917 | 1918 | 1919 |
|-----------------|-------|-------|-------|-------|-------|-------|
| January ----- | 51.62 | 42.94 | 29.69 | 29.00 | 13.00 | 14.00 |
| February ----- | 51.59 | 44.19 | 30.81 | 28.57 | 13.00 | 14.00 |
| March ----- | 51.62 | 44.50 | 31.75 | 28.07 | 13.00 | ----- |
| April ----- | 51.53 | 43.12 | 31.00 | 28.52 | 14.00 | ----- |
| May ----- | 51.40 | 40.37 | 30.81 | 27.35 | 14.00 | ----- |
| June ----- | 51.47 | 38.87 | 30.55 | 24.35 | 14.00 | ----- |
| July ----- | 51.28 | 35.00 | 30.56 | 22.35 | 14.00 | ----- |
| August ----- | 51.06 | 34.00 | 32.00 | 19.35 | 14.00 | ----- |
| September ----- | ----- | 34.87 | 32.50 | 14.50 | 14.00 | ----- |
| October ----- | 48.00 | 34.25 | 31.20 | 14.50 | 14.00 | ----- |
| November ----- | 45.37 | 32.87 | 30.12 | 13.00 | 14.00 | ----- |
| December ----- | 42.00 | 31.25 | 29.77 | 13.00 | 14.00 | ----- |

Source: U.S. Department of Commerce Handbook of Foreign Currency and Exchange, 156 (1930).

It should be noted that the quotations for the ruble from November 1917 to February 1919 are purely nominal, because no actual transactions in ruble drafts were performed.

On various occasions the provisional Government of Russia (March 1917 to October 1917) issued State Bank notes which

were commonly known as "Kerenski rubles" or "Duma rubles." The Duma was the Parliament of Russia which authorized the issuance of some of these ruble notes.

Within Russia, the "Kerenski" ruble and "Duma" ruble had officially and practically the same value as the Imperial ruble then also in circulation. Temporarily, during the first period of the revolution in 1917-1919, the Imperial rubles were valued slightly higher by black-market operators in Russia, because they could be better used for certain purposes in the areas not dominated by the Soviets (Baltic States, Poland, Ukraine, Caucasasia, Siberia).

The Soviet Government admitted to circulation on par with the former rubles (Imperial and Kerenski), its own ruble currency, commonly known as "Soviet rubles." This currency consisted of bank notes, treasury notes, so-called "Liberty Loan" bonds and coupons of government interest-bearing securities issued by the Soviets. In 1919 the Soviet Government started to issue so-called monetary tokens, accounting tokens and credit rubles in various denominations. In 1922 new monetary tokens were introduced and exchanged at the ratio of one monetary token of 1922 for 10,000 rubles then in circulation. Again in 1923 new monetary tokens were put in circulation and exchanged at the ratio of one monetary token of 1923 for 50,000 rubles in monetary tokens of 1922. Finally on March 7, 1924 a new currency, the "Chervonetz ruble," became the exclusive monetary unit of the Soviet Union, but the new ruble was only remotely connected with the old one.

The gold value of the "Chervonetz ruble" was theoretically the same as that of the pre-World War I gold ruble, namely 51.45½ United States dollars for 100 rubles. This nominal ratio was maintained by the Government of the Soviet Union under pressure, and the real or effective purchasing power of the ruble was much less than it appeared to be from the rigidly maintained official rate of exchange. However, this official rate of exchange is the only one upon which exchange transactions were based and in which a relation between the dollar and ruble for that period of time can be expressed.

The Singer Manufacturing Company claim illustrates the use by the Commission of various ruble-dollar rates of exchange in the evaluation of property as of different dates. Another claim was based entirely upon a holding of 500,000 Imperial Russian rubles issued in 1912, which had become worthless. A Soviet decree of March 7, 1924 fixed the ratio of equivalence between the newly created State Treasury Notes of 1924, also known as Treasury Notes in Rubles in Gold, and the currencies which were legal tender and in circulation in Russia prior to the date of the decree. One ruble in State Treasury Notes of 1924 was legally equivalent to 50,000 rubles of the 1923 issue, 5 million rubles of the 1922 issue, and 50 billion rubles of all pre-1922 issues, including State Credit Notes of the Imperial Russian Government known as Romanoff, Czarist or Imperial rubles, the State Credit Notes issued in 1917 by the Provisional Government in denominations of 1,000 and 250 rubles which became known as Duma rubles, the Kerenski ruble issued in 1917, the Credit Notes of 1918

which the Soviet Government authorized the People's Bank to issue in unlimited quantity, and the many issues of paper notes from 1919 to 1924 some of which were known as monetary tokens and accounting tokens.

In determining the issue of whether losses sustained as a result of devaluation of the Russian ruble give rise to valid claims under international law, the Commission cited authorities in support of the proposition that all matters pertaining to currency are inherently within the jurisdiction of the State.

The Permanent Court of International Justice has stated that "It is indeed a generally accepted principle that a state is entitled to regulate its own currency." (Serbian and Brazilian Loan Cases, Publications of the Court, Series A Nos. 20/21, at 44 (1929).)

This rule has been followed by international commissions. The American-British Claims Commission decided cases on the theory that losses sustained from the depreciation of the dollar "do not constitute the basis of any valid claim." (III Moore, International Arbitrations 3066 (1898).) Where a claim was presented by the holder of a German bank note for payment in gold, the Upper Silesian Arbitral Tribunal rejected it on the same general principle. (Mann, *The Legal Aspect of Money* 421 (1953).)

The American-Mexican Claims Commission has held that, "It is elementary law that states are not responsible for losses caused by currency fluctuations." (American-Mexican Claims Commission, Report of the Department of State, Decision 1B, 147, 149; Decision 38B-47D, 229, 231; Decision 43D, 239-240; Decision 39B-48D, 333, 336.)

The Tripartite Claims Commission (United States, Austria, and Hungary) rejected the suggestion that, absent some act of the Austrian (Hungarian) Government operating upon debts of its nationals to American nationals, it was obligated to pay American creditors for losses sustained by them due to depreciation during and after World War I in the exchange value of Austro-Hungarian currency. The Commission held that such a construction of the treaty, sustainable only on the theory that Austria (Hungary) was liable for all of the direct and indirect, immediate and ultimate, consequences of the war, was not justified. Administrative Decision No. II, Am. J. Int'l L. 610, 621 (1927).)

Under domestic law, the Constitution of the United States provides that the Congress shall have the power, "To coin Money, regulate the Value thereof, and of foreign coin . . ." (Article I, § 8, clause 5) ; and, "To borrow Money on the credit of the United States." (Article I, § 8, clause 2.) In a well-known case (*Juilliard v. Greenman*, 110 U.S. 421, 448 (1884)), the Supreme Court of the United States held that "Under the two powers taken together, Congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, as regards the national government or private individuals, . . . the power . . . being one of the powers belonging to sovereignty in other civilized nations. . . ."

The Commission further stated that international law recognizes two exceptions to this general rule. The first exception is

founded on the theory of denial of justice. Thus, where a state pursues a deliberate course of injuring or discriminating against foreigners, a violation of international law results. (Mann, *op. cit. supra* at 423.) The second exception may be found in a provision in a treaty or other international agreement. (*Id.* at 425-34.) Accordingly, while losses resulting from devaluation of currency would normally not constitute the basis for a claim under international law, a state may consent to compensate for such losses by making provision therefor in a treaty or executive agreement.

The Commission found that there was no denial of justice within the legal meaning of the term concerning the devaluation of the Russian ruble, and that no provision had been made for such claims in any treaty or agreement with any government of Russia, and denied the claim. (*Claim of Walter J. Zuk*, Claim No. SOV-40492, Dec. No. SOV-9, 10 FCSC Semiann. Rep. 172 (Jan.-June 1959).)

The conclusions reached on this issue followed the suggestions made in Panel Opinion No. 7 of April 11, 1956, in which the Commission stated that the principle of non-discrimination has frequently been emphasized in connection with exchange control, and on numerous occasions the Department of State, expressly or by implication, has treated discrimination in the operation of exchange control as an international wrong. (I Hyde, *International Law* § 210a (1951); II Hackworth, *Digest of International Law* § 121 (1941).) In this Panel Opinion the Commission also found the attitude of the United States Government in the enactment and administration of prior legislation of interest. The Economic Cooperation Act of 1948, which provides for a system of insurance to protect American investments abroad against certain losses, restricts the guarantee to losses from currency restrictions and from nationalization measures, but does not protect the investor against devaluation of foreign currencies. (62 Stat. 137, 144-5 (repealed); Investment Guaranty Manual, Mutual Security Agency (1952).) In like manner, the Mutual Security Act of 1954 provides only convertibility insurance to protect the foreign investor against the risk of inability to convert foreign investment receipts into dollars and expropriation insurance. It does not provide insurance to protect the foreign investor with respect to the devaluation of foreign currencies. (68 Stat. 832, 848 (repealed); Investment Insurance Manual, Foreign Operations Administration (1954).)

In another claim, a treasury bill issued on August 1, 1917 in the amount of 1,000 rubles and due on August 1, 1918, was deemed by the Commission to be in the nature of currency. The Commission held that the Decree Concerning the Annulment of State Loans, published in No. 20 of the Gazette of the Workers' and Peasants' Government, dated January 28, 1918 (February 10, 1918, according to the Gregorian calendar), provided that short term obligations and notes of the State Treasury would remain in force, that interest would not be paid, but the certificates themselves would circulate on a par with credit notes (bank notes). Accordingly, the claim was denied for the same reason as the claim of *Walter J. Zuk, supra*. (*Claim of Esther Schiff Bondareff*, Claim No. SOV-42290, Dec. No. SOV-1411

(Amended), 10 FCSC Semiann. Rep. 200 (Jan.-June 1959).) However, when the evidence indicated that treasury bills were in a Russian bank and were confiscated in the course of the nationalization of the bank, the claimant was entitled to an award, as in *The Singer Manufacturing Company* claim.

Valuation.—Just as in other claims programs, the Commission adhered to the rule that the amount of an award should be based upon the value of property on the date of its loss. (*Claim of Division of World Missions of the Board of Missions of the Methodist Church*, Claim No. SOV-41778, Dec. No. SOV-2298, 10 FCSC Semiann. Rep. 203 (Jan.-June 1959).) The Commission was faced with a more involved problem with respect to the valuation of property in the Soviet Union than in any other area. Although the major losses occurred during the years of 1917 and 1919, many occurred on various dates between 1917 and 1933. Monetary inflation during the revolution and the civil war distorted all prices within the Soviet Union and made comparison with prices outside of that country very difficult. Whenever better evidence was not available, the Commission considered 1913 valuations of property in Russia, inasmuch as 1913 was the last normal economic year prior to World War I in Russia.

As stated in the annotations to *Claim of Jules M. Pavitt*, appearing at page 323, all available evidence was utilized in determining the value of nationalized enterprises and shares of stock therein, including stock market quotations, purchase price paid, and net worth as determined from financial statements. *The Singer Manufacturing Company* decision demonstrates a method of determining value at time of loss by working from a balance sheet for the closest period available, and making adjustments therein as deemed warranted from the evidence of record, particularly in the area of depreciation and reserves for bad debts. The Commission rejected an argument for evaluating real property at sums greater than those shown in the balance sheet because it was insured for larger amounts. It is also noteworthy that claimant occupied a status as creditor of the nationalized enterprise as well as owner of 100% of its stock. The total value of the nationalized enterprise was found to be less than the amount of the debt which it owed to claimant. Accordingly, claimant's award as a creditor was limited to the value of the enterprise at the time of its taking; and no award was made to claimant as owner, inasmuch as no value would have remained in the enterprise after payment of the debt.

Against the Soviet Government

Confiscation by the Soviet Government of personal property while in custody of lessee pursuant to contract gave rise to claim in favor of lessor under Section 305(a)(2).

Claim based on indirect losses, such as loss of good will, denied under Section 305(a)(2), Title III of the 1949 Act because such losses, being speculative, uncertain and not susceptible of accurate determination, are not recognized under international law.

Claim based on losses resulting from labor riots, unjustified increases in wages, taxes and contributions, denied under Section 305(a)(2) because claimant failed to establish that such losses were attributable to actions of the Soviet Government that violated international law.

PROPOSED DECISION

This claim for \$8,012,893.77 against the Soviet Government under the provisions of Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, by United Shoe Machinery Corporation, a national of the United States within the purview of Section 301(2)(B) of the aforesaid Act, is based upon the losses sustained by branch offices of claimant's subsidiary company in Petrograd and Moscow, whose property was confiscated by the Soviet Government.

The record discloses that on January 19, 1909, the Aktieselskabet United Shoe Machinery Company of Copenhagen, Denmark, was organized as a wholly-owned subsidiary of the United Shoe Machinery Corporation of Boston, Massachusetts, the claimant herein. At the end of 1911, the aforesaid Danish subsidiary took over claimant's business in Russia, which prior to that time was conducted by claimant's wholly-owned Germany subsidiary. The business consisted of the sale and lease of American-made shoe manufacturing machines to Russian shoe manufacturers. As of June 11, 1913, the Imperial Russian Government granted a license to claimant's aforesaid Danish subsidiary to carry on branch offices in Petrograd and Moscow under the name of "United Shoe Machinery Company, Limited," but the branch offices were not incorporated. The assets of the branches and the machines on lease were directly owned by Aktieselskabet United Shoe Machinery Company, Copenhagen, claimant's subsidiary, and through the subsidiary company by the claimant herein.

The record further discloses that the branch offices of claimant's subsidiary in Petrograd and Moscow, consisting of two (2)

offices for the sale and lease of machinery, of two (2) warehouses and of one (1) workshop, were nationalized by a Soviet decree of June 28, 1918; and that claimant's machinery, rented to various Russian shoe manufacturing and repair shops was confiscated by the Soviet Government at the same time, or shortly thereafter, when the major shoe manufacturing plants in Russia were nationalized. It should be noted, however, that representatives of claimant's subsidiary conducted some limited business on the premises of the branch offices, under the supervision of Soviet officials, until the beginning of 1920.

Claimant asserts that the property of the branch offices, at the time of nationalization, included the following items:

I. *Bank accounts deposited with the following banks:*

| | Rubles |
|--|--------------|
| National City Bank of New York, Petrograd Branch ----- | 1,003,879.16 |
| Petrograd Discount Bank, Petrograd ----- | 626,137.20 |
| Azoff-Don Commercial Bank, Petrograd ----- | 74,019.41 |
| Russo-Asiatic Bank, Petrograd ----- | 47,371.51 |
| Moscow Bank of Commerce, Petrograd ----- | 65,774.65 |
| Do ----- | 53,423.65 |
| Volga-Thams Commercial Bank, Petrograd ----- | 30,889.70 |
| Russian Bank for Foreign Trade, Petrograd ----- | 245,873.81 |
| Siberian Bank of Commerce, Petrograd ----- | 59,974.24 |
| Moscow Industrial Bank, Petrograd ----- | 218,167.13 |
| People's Bank, Petrograd ----- | 500.00 |
| Total ----- | 2,426,010.46 |

II. *Treasury Bills:*

5% Imperial Russian Government Short Term Treasury Bills in the amount of 50,000 rubles, deposited with the Danish Red Cross Office in Petrograd.

III. *Currency:*

260,000 rubles in claimant's possession; 670,000 rubles confiscated in 1920 or thereafter in the Petrograd Branch Office; 700,000 rubles on deposit with the Danish Red Cross in Petrograd; 450,000 rubles on deposit with Dr. Folmer Hansen, an official of the Danish Red Cross in Petrograd.

IV. *Insurance Claim:*

A liquidated damage claim for 40,000 rubles against the Insurance Company "Rossija" of Petrograd arising out of a collision of the S/S Kursk with a mine, on a voyage from England to Russia in 1916, whereby claimant's goods were lost or damaged.

V. *Machines for Lease in Stock at Petrograd Warehouse:*

Valued by claimant at \$141,614.00.

VI. *Machinery Other Than Machines for Lease in Stock at Petrograd Warehouse:*

Valued by claimant at \$13,735.18.

VII. *Sundry Merchandise in Stock:*

Valued by claimant at \$23,695.38.

VIII. *Machine Parts in Stock:*

Valued by claimant at \$7,675.00.

IX. *Machines out on Loan in 62 Factories Located in Russia:*

Valued by claimant at 5,102,076 rubles.

X. *Personal Property (Furniture, Furnishings, etc.):*

Valued by claimant in the amount of \$22,217.02.

XI. *Accounts Receivable from Russian Government Agencies:*

In the aggregate claimed amount of 80,175.88 rubles.

XII. *Claim Arising from Labor Riots:*

In the claimed amount of \$4,120.00.

XIII. *Claim for Illegal Taxes and Contributions:*

In the claimed amount of 3,331.27 rubles.

XIV. *Claim for Good Will:*

In the sum of \$2,933,308.24.

Ruble Currency and Treasury Bills

For the reasons set forth in the attached Proposed Decision No. 9, *Claim of Walter J. Zuk* (Claim No. SOV-40492) that part of the claim based upon an amount of 260,000 rubles in currency, presently in claimant's possession, must be and is hereby denied.

No evidence has been submitted that claimant's representatives had, in 1920, subsequent to the nationalization, in the branch office in Petrograd, cash in the amount of 670,000 rubles; nor has any evidence been filed showing that an amount of 700,000 rubles on deposit in 1920 with the Danish Red Cross in Petrograd and an amount of 450,000 rubles on deposit in 1920 with Dr. Folmer Hansen, an official of the Danish Red Cross in Petrograd, were actually confiscated. Even if evidence had been submitted that these funds had, in fact, been confiscated, that part of the claim would nevertheless have to be denied since, subsequent to the year 1920, and at the time of any such confiscation, the ruble currency in Russia was to all intents and purposes worthless. The cash and the deposits were expressed in a practically destroyed currency. While the currency destruction was an economic loss to the claimant, it was not a confiscation of property by the Soviet Government. It was rather the result of tremendous damage inflicted to the Russian economy caused by World War I, the Revolution and the Civil War, and not by any action of the Soviet Government giving rise to a compensable claim under the Act.

The record also shows that a representative of claimant's subsidiary in Petrograd in 1920, deposited with the Danish Red Cross in Petrograd, 5% Imperial Russian Government Short Term Treasury Bills in the amount of 50,000 rubles. On January 28, 1918 (old style) the Soviet Government decreed that such Treasury Bills shall remain in force, but that the certificates shall circulate on a par with currency. In view of the foregoing, the Commission finds that the aforesaid Treasury Bills in 1920, were legally in circulation as cash notes, and that they should be treated as ruble currency. Accordingly, that part of the claim for currency in the aggregate amount of 1,870,000 rubles is also denied.

Labor Riots, Illegal Taxes and Contributions, Good Will

No evidence has been further submitted, that the losses asserted by claimant based on labor riots, unjustified increases in wages, etc., taxes, and contributions in the amount of \$4,120.00 and 3,331.27 rubles, respectively, are attributable to illegal actions of the Soviet Government. Absent such evidence the Commission finds that this part of the claim is also not compensable under the Act.

With regard to the claim for lost good will in the amount of \$2,933,308.24, the Commission is of the opinion that claims for the compensation of indirect damages, such as the loss of good will are compensable, only, if such losses are reasonably certain or susceptible of accurate determination. (See Borchard, *The Diplomatic Protection of Citizens Abroad* §§ 172, 173 (1928), and cases cited therein.) The claim for good will is based upon the earning power of claimant's subsidiary branches in Russia during the pre-World War I period and during World War I. However, the nature of the entire economy in Russia as a result of World War I altered to such an extent, that conditions of the pre-World War I period cannot be compared with the conditions prevailing thereafter. Accordingly, no determination can be made of losses allegedly sustained by claimant with respect to future earnings, upon which the claim of good will is predicated.

Furniture and Furnishings of Company's Executives

The evidence discloses that part of the furniture and furnishings in the offices in Petrograd and Moscow were owned by company's executives. The Commission finds that this part of the equipment in the company's office is not compensable, not being owned by claimant or by its subsidiary.

In view of the foregoing, that portion of the claim based on

labor riots, on illegal taxes and contributions, on furniture and furnishings owned by the executives of the company, and on good will is hereby denied.

Bank Accounts

The Commission finds that claimant, through its subsidiary, the Aktieselskabet United Shoe Machinery Company of Copenhagen, Denmark, was the owner of eleven (11) bank deposits, described above under I, in the aggregate amount of 2,426,010.46 rubles; that on December 28, 1917, the Soviet Government imposed restrictions on the payment of bank deposits which ultimately resulted in their confiscation; that the exchange rate of the ruble on the New York market in 1917 was quoted at 13 cents for 1 ruble; and that claimant is entitled to compensation for this item of the claim under Section 305(a) (2) of the Act in the amount of \$315,381.36, plus interest as described in more detail below.

Machinery

The record before the Commission shows that claimant, through its Danish subsidiary, was the owner in 1918, of the machinery listed below and of the value set forth, which machinery was, on or about June 28, 1918, confiscated by the Soviet Government.

| | |
|--|--------------|
| Machines for lease in stock at the company's warehouse in Petrograd, valued at ----- | \$141,614.00 |
| Other machines in stock at the company's warehouse in Petrograd, valued at ----- | 13,735.18 |
| Sundry machinery in stock on the premises of the branch office in Petrograd ----- | 23,695.38 |
| Machine parts in stock on the premises of the branch office in Petrograd ----- | 7,675.00 |
| Machines out on lease in 62 Russian factories in prewar Russia, valued at 5,102,076 rubles, converted into dollars at 13 cents for 1 ruble, equal to ----- | 663,269.88 |
| Less machines rented to 9 factories located in postwar Poland at Lithuania, valued by claimant in the aggregate amount of 763,120 crowns or at the exchange rate of 15.35 cents for 1 crown at ----- | 117,138.92 |
| | 546,130.96 |
| Total value of machinery ----- | 732,850.52 |

The machines out on lease had been rented to Russian factories during the years 1911 to 1917. In 1918 the average age of the machines in use was in excess of 4 years; taking into account a rate of depreciation of 10% for each year, a deduction for depreciation of 40% on the amount of \$546,130.96 is hereby made, amounting to ----- 218,452.38

So that the net value of the machinery is established at \$514,398.14

Accordingly, claimant is entitled to compensation for this item of the claim in the sum of \$514,398.14 plus interest as specified in more detail below.

Insurance Claim and Accounts Receivable

The record shows that claimant's subsidiary had on deposit with the Insurance Company "Rossija" of Petrograd, 40,000 rubles, on account of losses of part of goods shipped on the S/S Kursk and that it had outstanding an amount of 80,175.88 rubles for merchandise delivered to various Russian governmental agencies prior to the year 1918. The Commission finds that part of the assets confiscated by the Soviet authorities, on June 28, 1918, consisted of the aforesaid claim against the Insurance Company "Rossija" and against the Russian Government or its subdivisions in the aggregate amount of 120,175.88 rubles.

The records of the Commission disclose that the exchange rate of the Russian ruble was quoted in June 1918, on the New York market at 14 cents for 1 ruble.

Accordingly, claimant is entitled to compensation for the accounts receivable in the amount of \$15,622.86 with interest as specified below.

Personal Property

The evidence before the Commission shows that the branch office of claimant's subsidiary had furniture, furnishings and some equipment in their offices and warehouses in Petrograd and Moscow, all of which was confiscated by the Soviet Government. No evidence has been submitted with respect to the value of such personal property. Considering that such property was acquired in 1911, and shortly thereafter, and that it had been used since its acquisition, the Commission determines that the value of such personal property was \$10,000.00.

The Commission, therefore, finds that claimant is entitled to compensation for personal property (furniture, furnishings, equipment, etc.) in the amount of \$10,000.00 plus interest as described below.

Interest

In addition to the awards as stated above claimant is entitled to 6% interest per annum on the principal amounts of the awards from the date the claim arose until November 16, 1933, the date of the Litvinov Assignment (Section 301(6) of the Act). The computation of the principal amounts and of interest is shown, as follows:

| | Principal amount | Date claim arose | Amount of 6 percent interest until Nov. 16, 1933 |
|--|---------------------|---------------------|---|
| Bank accounts ----- | \$315,381.36 | Dec. 28, 1917 | \$300,558.43 |
| Machinery ----- | 514,398.14 | June 28, 1918 | 474,789.48 |
| Insurance and accounts re- ceivable ----- | 15,622.86 | ---do----- | 14,419.90 |
| Personal property ----- | 10,000.00 | ---do----- | 9,230.00 |
| Total ----- | \$855,402.36 | | \$798,997.81 |

AWARD

On the above evidence and grounds, and upon the entire record, this claim is allowed and an award is hereby made to UNITED SHOE MACHINERY CORPORATION, claimant herein, in the principal amount of eight hundred fifty-five thousand four hundred two dollars and thirty-six cents (\$855,402.36) plus interest thereon in the amount of seven hundred ninety-eight thousand nine hundred ninety-seven dollars and eighty-one cents (\$798,997.81). No determination is made with respect to interest for any period subsequent to November 16, 1933.

Payment of the award herein shall not be construed to have divested claimant herein, or the Government of the United States on claimant's behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

Dated at Washington, D.C.

May 20, 1959

Confiscation of leased property.—The instant claimant, which operated two branch offices, two warehouses, and a workshop in Russia, and leased machinery to shoe manufacturers in Russia, received an award for its assets which were confiscated by the

Soviet Government, including bank deposits, furniture and equipment, and machinery. In addition to the machinery in stock, claimant was the owner of all the machines on lease to Russian manufacturers which also were lost, and all were included in the award.

Indirect losses.—A portion of the claimed amount was for loss of good will, which was denied as an indirect loss, not reasonably certain and susceptible of accurate determination. Similarly, in the *Claim of Westinghouse Air Brake Company* (Claim No. SOV-41804, Dec. No. SOV-3124, 10 FCSC Semiann. Rep. 240 (Jan.-June 1959)), where the value of a nationalized enterprise was being determined on the basis of net worth as calculated from a balance sheet, an asset item of 60,000 rubles for patents, good will and license was eliminated. In the absence of any evidence to reflect a value for such items, they were considered worthless in ascertaining the net worth of the company.

Amounts claimed by the United Shoe Machinery Corporation as losses resulting from labor riots and unjustified increases in wages, taxes and contributions, were denied on the ground that it had not been established that these were attributable to illegal actions of the Soviet Government.

Royalties.—It was not always clear whether an action of the Soviet Government constituted a taking of property from which a compensable claim arose. In the *Claim of General Electric Company* (Claim No. SOV-42234, Dec. No. SOV-3119, 10 FCSC Semiann. Rep. 234 (Jan.-June 1959)), based upon the nationalization of *Wseobshtchaia Elektricheskaya Kompania (WEK)*, claimant received an award as a creditor of the nationalized firm, and also as the owner of 40,000 shares of stock therein. A further portion of the claim, for \$250,000.00, was based upon an agreement between claimant and WEK under which the latter was to pay royalties of not less than \$50,000.00 per year for the use of certain of claimant's patents and facilities. The claimed amount was for royalties for a period subsequent to the nationalization of WEK. The Commission denied this portion of the claim, stating:

The question presented is whether the Soviet Government took the aforesaid contract by the nationalization of WEK or by such nationalization rendered impossible the performance of such contract whereby the claimant's rights thereunder were not taken by that Government but frustrated by its lawful action. Although a case directly in point has not been found, courts of the United States have ruled on similar questions relating to governmental "takings" within the meaning of the fifth amendment to the United States Constitution. In *Omnia Commercial Co., Inc. v. United States*, 43 Sup. Ct. 437, 438 (1923), the Supreme Court stated that destruction of, or injury to, property is frequently accomplished without a "taking" in the constitutional sense. To prevent the spreading of a fire, property may be destroyed without compensation to the owner. The conclusion to be drawn from the various cases cited in such decision is that for consequential loss or injury resulting from lawful governmental action the law affords no remedy.

If, under any power, a contract or other property is taken for public use, the government is liable; but, if injured or destroyed by lawful action, without a taking, the government is not liable.

In the present case the nationalization of the Russian Company by the Soviet Government appears to have terminated the contract and did not keep it alive for the use of that Government. In view of the foregoing, the item of the claim must be denied.

Claims arising after November 16, 1933.—Another claim for unpaid royalties, resulting from an unauthorized publication of the Russian translation of a scientific book by two American authors, was denied because the Russian publication of the book took place in 1937; that is, after November 16, 1933; and claims which arose after that date were not compensable under Section 305 of the Act, which specifically covered claims of United States nationals arising prior to November 16, 1933. (*Claim of Gabor Szeco, et al.*, Claim No. SOV-40912, Dec. No. SOV-2447, 10 FCSC Semiann. Rep. 208 (Jan.-June 1959).) A claim based upon the loss of certain real property assertedly taken by the Soviet Government was denied, inasmuch as the property was located in territory which was formerly a part of Czechoslovakia and was ceded to the U.S.S.R. on November 16, 1933, and the Commission found that the claim arose subsequent to November 16, 1933. (*Claim of Samuel Waldman*, Claim No. SOV-40083, Dec. No. SOV-239, 10 FCSC Semiann. Rep. 178 (Jan.-June 1959).)

Extraterritorial effect.—A claim based upon property outside of Russia involved a ruble deposit in the Shanghai branch of the Russo-Asiatic Bank. The Russo-Asiatic Bank was chartered under Russian law and had branches in other countries, each conducting its own business so as to preserve a balance of assets and liabilities. All banking institutions in Russia were nationalized on December 27, 1917, and the Russo-Asiatic Bank was merged into the People's Bank. Thereafter the Paris office acted as head office of the foreign branches of the former Russo-Asiatic Bank, and liquidated the Shanghai branch in 1926, paying 55% of amounts owing to general creditors who filed claims in Shanghai. The Commission denied the claim before it, finding that the nationalization of the Russo-Asiatic Bank affected only its property in Russia, and that the foreign branches had continued to operate without interference from the Soviet Government, which neither took their assets nor assumed their liabilities. In this respect, following the general rule of international law, the Commission refrained from giving extraterritorial effect to the nationalization decree of the Soviet Government. (*Claim of Hugo Paul Bankert, Sr.*, Claim No. SOV-40520, Dec. No. SOV-1938, 10 FCSC Semiann. Rep. 193 (Jan.-June 1959).)

Two decisions of the United States Supreme Court which may appear to be to the contrary, in *United States v. Belmont*, 301 U.S. 324 (1937), and *United States v. Pink*, 315 U.S. 203 (1942), are distinguishable from the *Bankert* claim. In the *Belmont* case, the nationalization by the Soviet Government of a Russian corporation included a sum of money deposited by the corporation with Belmont, a private banker in New York. As a part of the

Litvinov Assignment of November 16, 1933, the claim of the Soviet Government against Belmont for these funds was assigned to the United States Government, which recovered in its suit. In the *Pink* case, the nationalization by the Soviet Government of a Russian insurance company included assets of that company in the hands of the Superintendent of Insurance in New York, and the claim of the Soviet Government therefor also was included in the Litvinov Assignment so that the United States Government recovered in its suit. In both cases, the Russian nationalization decrees specifically included all of the property of the nationalized enterprises, wherever situated; and in both cases the assignment of the claims to the United States Government was a part of a larger plan to bring about a settlement of the rival claims of the two countries by international compact in which the United States recognized the U.S.S.R. as the *de jure* Government of Russia. The principle of judicial refusal to review a foreign act of government continues to apply where the property affected is located within the territorial jurisdiction of the country enacting the measure, but not where the property is located outside of that country, "in the absence of some overriding international compact." (Re, Foreign Confiscations in Anglo-American Law 43 (1951).)

CLAIMS AGAINST CZECHOSLOVAKIA

CZECHOSLOVAKIAN CLAIMS PROGRAM STATISTICS

Statutory authority: Title IV of the International Claims Settlement Act of 1949, 72 Stat. 527 (1958), 22 U.S.C. 1642-1642p (1964).

Number of claims: 4,024.

Amount asserted: \$364,000,000.

Number of awards: 2,630.

Amount of awards: \$113,645,205.41.

Amount of fund: \$8,540,768.41.

Program completed: September 15, 1962.

MIA FOSTER

Against the Government of Czechoslovakia

Claim denied where property on which claim based not owned by national of the United States at time of taking.

PROPOSED DECISION

This is a claim against the Government of Czechoslovakia under Section 404 of the International Claims Settlement Act of 1949, as amended, by MIA FOSTER, a national of the United States since her naturalization in the United States on December 4, 1952, based on the nationalization of her one-fourth interest in the property of a factory known as "Wiener Brothers" in Klatovy, Czechoslovakia.

The record before the Commission discloses that the property upon which this claim is based was nationalized by the Government of Czechoslovakia during 1948, prior to the date on which the claimant became a national of the United States.

Section 404 of the Act provides, *inter alia*, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein owned at the time by nationals of the United States.

Section 405 of the Act provides that:

A claim under section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

Since the property upon which this claim is based was not owned by a United States national on the date of nationalization or other taking thereof, the claim must be and hereby is, denied.

The Commission finds it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D.C.

November 13, 1959.

Nationality requirements.—As shown in the instant claim, the conclusion which the Commission had reached in previous claims programs through application of principles of international law was spelled out specifically as to claims against Czechoslovakia under Title IV of the 1949 Act. Under Section 405 a claim could not be allowed unless the property upon which it is based was owned by a United States national on the date of nationalization or other taking, and the claim was held by a United States national continuously thereafter until the date of filing with the Commission. This clear statutory requirement undoubtedly reduced the number of objections filed by claimants whose claims were denied by Proposed Decision for failure to fulfill the nationality requirements, and perhaps discouraged the filing of claims by persons not meeting those requirements. Nevertheless, one claim was denied on the ground that Section 404 provides only for the determination of claims of nationals of the United States, and claimant had not been a United States national at any time. (*Claim of Miroslav J. Svestka*, Claim No. CZ-4595, Dec. No. CZ-4, 17 FCSC Semiann. Rep. 183 (July-Dec. 1962).) In another instance the Commission found that each of two claimants owned a one-half interest in property which was nationalized on September 1, 1946. An award was made to one claimant, who had been a United States national since May 20, 1929, for the value of his one-half interest at the time of loss. The other claimant was not naturalized until December 19, 1949. Accordingly, the claim for her one-half interest in the property was denied, because it was not owned by a national of the United States on the date of loss. (*Claim of Vincenz Machowsky, et al.*, Claim No. CZ-4476, Dec. No. CZ-2185, 14 FCSC Semiann. Rep. 179 (Jan.-June 1961).)

Section 401 of the statute defined "national of the United States" as "(A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity." Thus, a claim filed by a corporation organized under the laws of Switzerland, based upon the taking of certain of its assets in Czechoslovakia, was denied on the ground that the claimant was not a national of the United States. (*Claim of Gluba A. G.*, Claim No. CZ-2773, Dec. No. CZ-2201, 17 FCSC Semiann. Rep. 213 (July-Dec. 1962).)

Where the owner of a claim against Czechoslovakia died prior to the filing of the claim, and the claim was filed by the duly appointed administrator under the will, the Commission limited the award to 34% of the value of the property at the time of its loss, inasmuch as 66% was inherited under the will by non-nationals of the United States, and that portion of the claim was not owned continuously by United States nationals from the date of loss to the date of filing the claim. The Commission held, consistent with the established rule under international law, that the nationality requirement for compensability is to be applied to the persons beneficially entitled to the claim or any part thereof, or to the proceeds therefrom, rather than to an executor, administrator, or trustee. (*Claim of National Bank of Westchester, White Plains, as Administrator With the Will Annexed, Estate of Meta Blum, Deceased*, Claim No. CZ-1872, Dec. No. CZ-3312, 17 FCSC Semiann. Rep. 251 (July-Dec. 1962).)

Direct and indirect stock interests.—Under Section 406(b) of Title IV, a claim based upon a direct ownership interest in a corporation which was nationalized, or the property of which was nationalized, could be allowed without regard to claimant's percentage of ownership; but a claim based upon an indirect ownership interest in the corporation which was nationalized, or the property of which was nationalized, was allowable under Section 406(c) only if at least 25% of the corporation was owned by United States nationals at the time of loss. In this respect, claims against Czechoslovakia received the same treatment from the beginning as did claims against Bulgaria, Hungary, Rumania, Italy, and the Soviet Union after the amendment of Section 311(b) of the Act on August 8, 1958. (See annotations to *Claim of Niagara Share Corporation*, appearing at page 184.) In the application of this principle, a claimant who owned only eight shares of stock in Zapadomoravske Elektrarny received an award for the value of his eight shares at the time of nationalization of the corporation. (*Claim of John Lukac*, Claim No. CZ-2510, Dec. No. CZ-2230, 17 FCSC Semiann. Rep. 213 (July-Dec. 1962).) Where a claimant and his wife owned 8,213 shares (34.9%) of a Delaware corporation which owned a 47.07% interest in a nationalized Czechoslovakian corporation, giving claimant and his wife a 16.43% indirect interest in the Czechoslovakian enterprise, the portion of the claim based upon this holding was denied because it appeared from the record that the total interest of United States nationals in the Czechoslovakian firm at the time of its nationalization was 17.466%, or less than the required 25%. The same claimant received an award for lesser interests in other nationalized enterprises which he owned directly, so that the 25% requirement did not apply. (*Claim of Eugene de Rothschild*, Claim No. CZ-3633, Dec. No. CZ-3536, 17 FCSC Semiann. Rep. 259 (July-Dec. 1962).)

Against the Government of Czechoslovakia

Presumption under Section 404, Title IV of the 1949 Act that real property with gross annual income of 15,000 Czech crowns or more was taken by Czechoslovakia on January 1, 1953 under Law 80/52 Sb. rebutted by evidence of continuation of incidents of ownership.

Law of situs (lex loci rei sitae) determines ownership of real property. Marriage in France to a United States national did not effect conveyance of interest in real property under laws of Czechoslovakia in absence of agreement to that effect.

Temporary measures effected by national administration of property in Czechoslovakia during reconstruction period after World War II distinguished from national administration of property in 1956 which constituted "taking" of property under Section 404.

FINAL DECISION

This is a claim in the amount of \$200,000 against the Government of Czechoslovakia under Section 404 of Title IV of the International Claims Settlement Act of 1949, as amended, by ANGELA FROEHLICH LIPSON, a national of the United States since October 18, 1955, the date of her naturalization. The claim is based upon the nationalization or other taking by Czechoslovakia of an apartment house, also used as an office building, located at 27 Dlouha Street, in the center of the business district in the city of Prague.

The record before the Commission discloses that apartment buildings, of the type upon which this claim is based, fell within the purview of Law No. 80 52 Sb., enacted by the Government of Czechoslovakia, effective January 1, 1953, which compelled owners of leased buildings with a gross rental income of 15,000 Czech crowns or more (presently 3,000 Czech crowns or more) to deposit the rent in special accounts with government agencies.

The record in this claim further reveals, that from January 1, 1959, the management of the building was taken over by the City Housing Administration for the First District of Prague and that surplus income from the property, if any, was to be used for repairs and maintenance of all buildings in the same District.

Section 404 of the Act provides, *inter alia*, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization

or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

Section 405 of the Act provides that:

A claim under Section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

The Commission found that the property, upon which the claim was based, was taken by the Government of Czechoslovakia on January 1, 1953, which was prior to the date on which claimant became a national of the United States. The Commission further found that the action taken by the City Housing Administration on January 1, 1959, was nothing more than a mere formalization of the taking of claimant's property which occurred on January 1, 1953.

Accordingly, since the property upon which the claim was based was not owned by a national of the United States on the date of taking thereof, the claim was denied in a Proposed Decision issued by the Commission on September 7, 1960 and affirmed in its Final Decision dated March 20, 1961.

Thereafter, claimant's attorney petitioned to set aside the Final Decision on the ground that on the date of taking, claimant's husband, a native born citizen of the United States, owned an interest in the property in question by reason of his marriage to the claimant in France in 1951. The petition also requested that the Commission reconsider its Final Decision and its finding that the date of taking of the property was January 1, 1953.

Good cause being shown, claimant's petition was granted, the Commission's Final Decision dated March 20, 1961 set aside and a hearing scheduled at which claimant's attorney urged (1) that under French civil law, claimant's husband had acquired an interest in the property by virtue of the marriage in 1951, and (2) that the property in question had not been taken on January 1, 1953, since the claimant had enjoyed possession of the property and its fruits and income until October 23, 1956, the date the house was placed under national administration.

Under general principles of the conflict of laws, the provisions of the French civil code are not applicable to the facts in this claim. Since the real property upon which the claim is based is situated in Czechoslovakia, the law of the *lex loci rei sitae* determines the ownership of the property.

Only a few of the precedents that support this view will be cited:

Land is held and alienated according to the law of the place where it is situated, and cannot be held or appropriated otherwise than according to the *lex loci rei sitae*. *U.S. v. Crosby*, 11 U.S. (7 Cranch) 115 (1812).

Title to real estate is governed by the laws of the place where it is situated. *Johnson v. McIntosh*, 21 U.S. 543 (1823); *Montgomery v. Samory*, 99 U.S. 482 (1878).

In matters pertaining to real property the law of the *situs* governs. *O'Donnell v. U.S.*, 91 F. 2d 14, cert. granted 58 S. Ct. 146, reversed 303 U.S. 501 (1937).

It is recognized throughout the world that all incidents of the ownership of real property are governed by the law of the place where the property is situated. *United States v. Turkey*, Nielsen's Report (1937) pp. 674-675, in *American Board of Commissioners for Foreign Missions v. Turkey*.

The effect of a contract or title to land depends on the law of the land's *situs*. *Charles A. G. Forbes as Trustee v. Mexico*, Decision No. 29-B, American Mexican Claims Commission under the Act of Congress of December 18, 1942, pp. 198-201 (1948).

Ownership of real property is determined by the law of the *situs* of the property. *Claim of Manfred Sternberg*, Foreign Claims Settlement Commission's Decision No. Y-1527, Docket No. Y-1092 (1954).

The Commission's records indicate that the law of the *situs* of the property, namely of Czechoslovakia, does not accord to a husband an interest in his wife's real property which she acquired prior to her marriage unless the spouses concluded a special agreement to that effect.¹

No evidence has been submitted to show that claimant and her husband signed an agreement for the establishment of community property. The Commission, therefore, concludes that claimant's husband had no interest in the realty involved in this claim and that no claim accrued to him upon the taking of the property by Czechoslovakia.

The Commission has previously held that under the provisions of Law No. 80 52 *Sh.*, effective January 1, 1953, the owner of improved real property having a gross rental income of 15,000 Czech crowns or more per year was precluded from the free and unrestricted use of his realty and its fruits and, therefore, the

¹ Sections 22 and 29 of the Family Law of December 7, 1949, No. 265 Coll., effective January 1, 1950.

property has been considered as taken by the Government of Czechoslovakia on January 1, 1953. The record before the Commission, however, clearly establishes that this claimant was in possession and control of the property and enjoyed the fruits and income of the property upon which this claim is based until 1956, when the property was then placed under national administration. The question, therefore, presented is whether the presumption of a taking on January 1, 1953, the effective date of Law No. 80/52 *Sb.*, shall be applicable or whether the date of taking established by the facts in the claim, in this instance 1956, shall control.

The Commission reaffirms its previous determination that real property having a gross annual rental income of 15,000 Czech crowns or more was, by reason of Law No. 80/52 *Sb.*, presumptively taken on January 1, 1953; however, where the evidence of record indicates that claimant was in possession of the property subsequent to the date of January 1, 1953 enjoying the fruits of the property after that date, and that he was deprived of the possession of the property by subsequent action of the Government of Czechoslovakia, the date of such subsequent action shall be considered the date of taking of said property.

The claimant herein was in possession and control of the premises prior to January 1, 1953 and remained in such possession and control until October 23, 1956, when the property was placed under national administration.

Postwar Czechoslovakia legislation with respect to national administration of property commenced with Decree No. 5/45 *Sb.* of May 19, 1945 which provided for the placement under national administration of property considered essential to the national economy, and of property owned by absent persons and persons considered unreliable (not loyal) to Czechoslovakia. Often, such property had been alienated under duress by the occupying forces during World War II. A careful study of Decree No. 5/45 *Sb.* discloses that placement of property under national administration was originally considered by the Government of Czechoslovakia as a "temporary measure," to be terminated after the Czechoslovakian Government has ascertained whether such property should be returned "to the original owners, or confiscated, nationalized, or otherwise disposed of."

Pursuant to Law 128/46 *Sb.* of May 16, 1946, provision was made for the return of alienated property to "reliable" owners upon applications for restitution. All such proceedings were suspended on December 21, 1949, in anticipation of a claims settlement agreement with the United States. The Commission has consistently held that the date of taking in such cases is the

date of denial of such restitution, or December 21, 1949 in the event a petition for restitution was neither filed nor acted upon.

However, the action taken by the Government of Czechoslovakia, with respect to the property which is the subject matter of this claim is to be distinguished from similar action taken immediately following World War II. The record contains no evidence to show that this property was alienated during the war. The national administration in this case does not appear to have been a temporary measure as was the case during the period of reconstruction following World War II.

Evidence having been submitted to substantiate the fact that the property in question was placed under national administration as of October 23, 1956, the Commission holds that this action was merely another means of effecting a taking of property and finds, therefore, that said property was "taken" within the meaning of Section 404 of the Act on October 23, 1956 when national administration was imposed, without the payment of compensation.

The Commission concludes that the house, after deduction of the recorded mortgages, had a value of \$20,000 at the time of taking and that the claimant is entitled to compensation under Section 404 of the Act in the said amount, plus interest as specified below.

In arriving at the value, the Commission considered the evidence submitted by the claimant, namely, the description, location and type of the property, the use made of the property and photographs thereof. In addition to the foregoing, the Commission gave consideration to the gross annual rental of the property and to the fact that in the year 1942 the Zemska Banka pro Cechy (Regional Bank for Bohemia), a government-owned bank in Prague, extended a loan of 400,000 crowns to the owner of the house, secured by a first mortgage.

Accordingly, for the reasons stated, it is ORDERED that the Proposed Decision of September 7, 1960 be modified by this revised Final Decision; and it is further

ORDERED that the award granted herein be certified to the Secretary of the Treasury.

AWARD

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to ANGELA FROEHLICH LIPSON in the amount of Twenty Thousand Dollars (\$20,000.00) plus interest thereon at the rate of 6% per annum from October 23, 1956 to August 8, 1958, the effective date of Title IV of the Act, in the amount of

Two Thousand One Hundred Fifty Dollars (\$2,150.00) for a total award in the amount of Twenty-two Thousand One Hundred Fifty Dollars (\$22,150.00).

Dated at Washington, D.C.
March 28, 1962.

Law of situs governing ownership of realty.—The instant claim originally was denied because the claimant did not become a national of the United States until October 18, 1955, and the Commission found that her property, an apartment house in Prague, Czechoslovakia, had been lost on January 1, 1953, the effective date of a law affecting buildings with an annual rental of 15,000 crowns or more in such a way as to amount to a constructive taking thereof. Upon consideration of additional evidence, the Commission determined that the loss had not occurred until October 23, 1956, when the building was placed under national administration, and granted an award. For further discussion of the effect of the law concerning buildings renting for 15,000 crowns or more, and the placing of property under national administration, respectively, see the annotations to *Claim of Alexander Feigler*, appearing at page 427, and to *Claim of Mary Dayton*, appearing at page 417.

The aspect of the *Lipson* claim of particular interest here is claimant's contention in objecting to the original denial of her claim, to the effect that her husband had acquired an interest in the Czechoslovakian property under French civil law at the time of their marriage in France in 1951; and that he had been a United States national on January 1, 1953, so that an award should be made for his interest even if the Commission adhered to its holding that the property was lost on that date. In this respect the Commission held that the French code was not for application because the property was located in Czechoslovakia. Under Czechoslovakian law, a husband acquired no interest, by reason of marriage, in real property which his wife had acquired prior to the marriage, in the absence of special agreement. Applying the *lex loci rei sitae*, the Commission held that the husband had no interest in the property in Czechoslovakia, and no claim for its loss.

Equitable ownership.—In another claim which had been denied because claimant had not been a national of the United States at the time of loss of his real property, claimant endeavored to join as a party claimant his brother, who had become a United States national at an earlier date. Claimant urged that although the property had been recorded in his name, he had acquired it for himself and his brother under an agreement between the two, so that his brother was equitable owner of a part of the property. The property was located in Slovakia which, at the time of loss, was governed by Hungarian Customary Law based largely upon the Austrian Civil Code. Under this law, legal possession of a

right in real property could be acquired only by a regular entry in the public books, and equitable ownership in real property was not recognized, with limited exceptions concerning heirs and grantees in written instruments duly executed and acknowledged. Since the asserted agreement between claimant and his brother had not been reduced to writing, acknowledged, and recorded, the Commission held that the brother acquired no interest in the property, and declined to permit his joinder in the claim. (*Claim of Joseph Singer*, Claim No. CZ-3993, Dec. No. CZ-2556, 15 FCSC Semiann. Rep. 20 (July-Dec. 1961).)

Where a property owner executed a "Notarial Deed" in the office of a Czechoslovakian attorney, transferring his property in equal shares to five members of his family, and the property was taken by the Government of Czechoslovakia a month later, an award was made to the transferees, the Commission finding that they were the owners of the property on the date of loss, although it had not yet been recorded in their names. (*Claim of Dagmar Kane, et al.*, Claim No. CZ-1368, Dec. No. CZ-2847, 17 FCSC Semiann. Rep. 281 (July-Dec. 1962).) In other instances the Commission found, on the basis of evidence before it in the form of various unrecorded instruments, that ownership of property passed to claimants, particularly where transactions occurred during the occupation of Czechoslovakia when restrictive laws imposed by German authorities prevented orderly transactions between the parties in interest. (*Claim of Betty Tomaska Papanek*, Claim No. CZ-3207, Dec. No. CZ-3534; *Claim of Katherine Szasz*, Claim No. CZ-3263, Dec. No. CZ-3341; *Claim of Frederick Zuckerman Reitler*, Claim No. CZ-3985, Dec. No. CZ-3542.)

Sales under duress.—A portion of a claim based upon an oil concession in Czechoslovakia granted by German occupation authorities to a German corporation which subsequently transferred 40% thereof to a wholly-owned subsidiary of the claimant corporation, was denied. On May 19, 1945 the Czechoslovakian Government decreed that all transfers of property were invalid if they occurred after September 29, 1938 under the pressure of the occupation or national, racial or political persecution. The Commission held that the granting of the concession to the German corporation was within the purview of the decree, and without legal force and effect, as was the later transfer of 40% to claimant's subsidiary. (*Claim of Socony Mobil Oil Co., Inc.*, Claim No. CZ-2739, Dec. No. CZ-3320, 17 FCSC Semiann. Rep. 290 (July-Dec. 1962).)

Silent partners.—A claim based upon a loss of property in Czechoslovakia belonging to an Austrian partnership in which claimant asserted a 50% interest as a silent partner (*stiller gesellschaftler*), was denied. Under the Austrian Commercial Code, a silent partner has no proprietary interest in the partnership, his status being that of an unsecured creditor only. Although claimant's status later was changed to that of an official partner in the firm, the Commission held that there was no ownership of the property by a national of the United States at the time of its loss. (*Claim of Max Eisenstein*, Claim No. CZ-1153, Dec. No. CZ-2807, 17 FCSC Semiann. Rep. 229 (July-Dec. 1962).) In another instance, no award was made to a claimant who assertedly had

received a 42% interest in a partnership as gifts from the other partners, but whose name did not appear in the Commercial Register because it had been deemed advisable to treat him as a silent partner. The Commission held that he acquired no ownership interest in the partnership, but granted awards to other claimants who were active partners. (*Claim of Frederick Fraenkl, et al.*, Claim Nos. CZ-2989-91, Dec. No. CZ-3498.)

Procedures—Reopening of claims.—The *Lipson* decision provides an example of reopening a claim upon petition of the claimant and granting an award, after a previous denial of the claim by Proposed Decision had been affirmed by Final Decision. The Commission's regulations provided for the filing of such a petition, based upon newly discovered evidence, after the issuance of a Final Decision but not later than 30 days before the statutory date for the completion of the Commission's affairs in connection with the claims program.

Where an original claimant died after the issuance of a Final Decision denying his claim, and a successor in interest filed a petition to reopen the claim on the basis of newly discovered evidence, the petition was granted, the petitioner was substituted for the deceased claimant, and an award was made. This was done even though the petition was filed less than 30 days before the statutory end of the claims program, inasmuch as there was no statutory restriction upon the time for filing petitions to reopen, and the Commission was in fact able to consider and dispose of the petition before the program terminated. (*Claim of Rose B. Harris*, Claim No. CZ-3663, Dec. No. CZ-2144, 17 FCSC Semiann. Rep. 274 (July-Dec. 1962).) Where an award had been granted by Proposed Decision and affirmed by Final Decision, and thereafter additional information concerning the value of the property came to the Commission's attention as a result of an independent investigation, the claim was reopened on the Commission's own motion and the amount of the award was increased by Amended Final Decision. (*Claim of Alexander Schirger*, Claim No. CZ-4483, Dec. No. CZ-1877, 17 FCSC Semiann. Rep. 251 (July-Dec. 1962).)

In granting a petition to reopen a claim on the basis of newly discovered evidence, the Commission also permitted joinder of new claimants, such as children of the petitioner who also owned interests in the property and had been omitted inadvertently from the claim. (*Claim of Stefan Kapustik, et al.*, Claim No. CZ-4617, Dec. No. CZ-1151, 17 FCSC Semiann. Rep. 243 (July-Dec. 1962).) Where a claimant filed a petition to reopen his claim and the supporting evidence warranted an award for a property item not formerly claimed, the Commission included compensation for the additional item of property in the award made. (*Claim of Paul Stibrany, Administrator of the Estate of John Stibrany, Deceased*, Claim No. CZ-2425, Dec. No. CZ-2374, 17 FCSC Semiann. Rep. 276 (July-Dec. 1962).)

Hearing procedures.—Claimants had the right to object to Proposed Decisions, and to request oral hearing if desired. Even where claimant failed to appear at an oral hearing scheduled at his request, the Commission made a thorough review of the record, including any evidence submitted since the issuance of the

Proposed Decision, and increased the award where the evidence warranted such action. (*Claim of Joseph Timfeld*, Claim No. CZ-1982, Dec. No. CZ-284, 17 FCSC Semiann. Rep. 254 (July-Dec. 1962).)

Consolidated awards.—Section 408 of Title IV of the 1949 Act provided that with respect to any claim which at the time of award was vested in persons other than the person by whom the loss was sustained, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, indicating the respective interests of each, who then would participate in payments in proportion to their indicated interests, “in all respects as if the award had been in favor of a single person.” Under Section 413, the Treasury Department was to make an initial payment in the amount of \$1,000.00 on account of each award exceeding that amount, with later payments to be prorated, depending upon the total funds available and the total amount unpaid on all awards. Thus, where several persons inherited a claim from a decedent who owned the property at the time of its loss, they were granted a consolidated award rather than individual awards, so that they would share proportionately in one initial \$1,000.00 payment rather than receive initial payments of \$1,000.00 each. (*Claim of Helen Volcsko, et al.*, Claim No. CZ-3530, Dec. No. CZ-3270, 17 FCSC Semiann. Rep. 273 (July-Dec. 1962).)

Time for filing claims.—A number of claims under Title IV of the Act were denied because they were not timely filed. Section 411 provided that the Commission “shall give public notice by publication in the Federal Register of the time when, and the limit of time within which claims may be filed, which limit shall not be more than twelve months after such publication.” By publication in the Federal Register on September 16, 1958, the Commission gave public notice that claims against the Government of Czechoslovakia under Title IV must be filed by August 1, 1959. By publication in the Federal Register on July 24, 1959, the Commission extended this time to September 15, 1959. Where claimants had given written indication, on or before September 15, 1959, of their intention to file claims under Title IV, their claims were entertained if official claim forms were executed and filed within a reasonable time thereafter. In the absence of any communication to the Commission on or before September 15, 1959, however, the Commission had no alternative to denial of claims filed thereafter, having prolonged the filing period to the full extent permitted by the statute. (*Claim of Alex Korach*, Claim No. CZ-4930, Dec. No. CZ-2, 17 FCSC Semiann. Rep. 181 (July-Dec. 1962).) Objections were filed to the denial of a claim by Proposed Decision as untimely filed, the claimants pleading that the Government of Czechoslovakia had fraudulently concealed the fact of nationalization of their property until after the expiration of the filing period. The Commission affirmed the denial of the claim by Final Decision, stating that the statute permits no further extension of the filing period for any reason, however equitable and meritorious it may be. (*Claim of Edward George Trousil, et al.*, Claim Nos. CZ-5004, CZ-5005, Dec. No. CZ-1307.)

MARY HRUSOVSKY

Against the Government of Czechoslovakia

Prohibition against inheritance of real property by foreigners pursuant to laws of Czechoslovakia did not constitute a "taking" of property under Section 404, Title IV of the 1949 Act.

PROPOSED DECISION

This is a claim against the Government of Czechoslovakia under Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended, in the amount of \$3,255.29 by MARY HRUSOVSKY, a national of the United States by naturalization on June 7, 1948. The claim is based upon the loss of a house, land, meadows, orchard and vineyard in Smolenicka Nova Ves, interest in real property situated in Valtasur, and savings account No. 772 with the *Uverne druzstvo* of Valtasur, Czechoslovakia.

Section 404 of the Act provides, *inter alia*, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein, owned at the time by nationals of the United States.

The property in Smolenicka Nova Ves was owned by claimant's father, Stefan Studenc, who died on February 13, 1955 in Smolenicka Nova Ves. Pursuant to Section 4 of Law 139/47 Sb.¹ the State Notariat of Trnava, acting under authority of the probate court,² ordered by Decision D 139/55-38 of November 8, 1957 that the entire estate, being an agricultural enterprise, vest in Emilia Banic, one of the heirs because she was working the farm with her husband and was a member of the collective farm of Smolenice. According to Section 6 of Law 139/47 Sb. the amount of the compensation, payable to the bypassed heirs by the heir in which the inheritance vested, is to be determined by the court. The claimant takes the position that her intestate share in the estate was "taken" by the cited decision of the State Notariat.

It is not disputed that claimant might have been in better economic situation if she had received the real property instead of monetary compensation and in such respect may have sustained an injury. It is clear, however, that not all injuries suffered by a

¹ For the text of the pertinent provisions of Law 139/47 Sb. see Appendix attached hereto.

² Law No. 142/50 Sb., the Code of Civil Procedure, as amended (1950) (Czech.), and Law No. 52/54 Sb. on Jurisdiction of State Notariats (1954) (Czech.).

national of one state in the territory of another state are compensable through an international claim. As the cases indicate, the claim must be founded upon some breach of duty or other international obligation. In other words, a state cannot be said to be "responsible" unless there is alleged some act or omission on the part of the state which is in violation of international law.³ Consequently, the action of the State Notariat, complained of, would establish the responsibility of the State and amounts to a "taking" of property within the meaning of Section 404 of the Act only if such action was a breach of duty or other international obligation owed to the claimant by the Government of Czechoslovakia.

It is a settled principle of the common law that there can be no inheritance by, from or through an alien.⁴ Therefore, at common law, on the death of a citizen who leaves only alien kindred, the real property of the citizen escheats, and the title vests in the state without inquest of office.⁵

The right of the sovereign to prohibit an alien from taking property within the jurisdiction of the state by testamentary or intestate succession is not restricted to common law only but is a universally recognized right of the nations as stated by Chief Justice Taney in the following:

Now the law in question is nothing more than an exercise of the power which every state and sovereign possesses, of regulating the manner and term upon which property real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state.⁶

The common law rule was changed in many states of the Union by statute. The right to prohibit an alien from taking property through descent and distribution, however, was never denied. Treaty provisions regarding real property were therefore carefully phrased to preserve the traditional right of a state to determine for itself who could not acquire and hold land in its jurisdiction,⁷ and the United States has not entered into any treaties which have completely deprived states of the power to legislate in this field.⁸

³ Orfield and Re, *Cases and Materials on International Law*, at 498 (1955).

⁴ *Webb v. O'Brien*, 263 U.S. 313 (1932); *Levy v. M'Cartee*, 31 U.S. (6 Pet.) 102 (1832).

⁵ *Crane v. Reeder*, 21 Mich. 24, 4 Am. Rep. 430.

⁶ *Re Estate of Marlenios Apostolopoulos*, (-Utah-, 250 Pac. 469); 48 A.L.R. 1328 (1926) citing *Mager v. Grima*, 49 U.S. (8 How.) 490 (1850).

⁷ See Meekinson Treaty Provisions for the Inheritance of Personal Property, 44 Am. J. Int'l L. 319 (1950).

⁸ *Ibid.* citing Gibson, *Aliens and the Law* (1940).

In view of the right of nations to prohibit an alien from acquiring title to property situated within their jurisdiction and also in the absence of an agreement between the United States and Czechoslovakia to the contrary, the Commission concludes that the Government of Czechoslovakia did not violate any international obligation by Decision D 139/55-38 of the State Notariat of Trnava, and that prohibiting a national of the United States from acquiring real property in Czechoslovakia by descent does not amount to a "taking" of claimant's property within the meaning of Section 404 of the Act. Accordingly, that portion of the claim based upon property allegedly inherited from Stefan Studenc and situated in Smolenicka Nova Ves, is denied.

With respect to the real property in Valtasur, the Commission finds that claimant owned a one-half interest in land registered in register liber 290 of Valtasur as lot 396, which was taken without compensation by the Government of Czechoslovakia when it merged this land into the local collective farm on November 8, 1952.

Lot 396 in Valtasur was purchased by claimant and her former husband, Vendelin Duris, for 18,000 *koruny* in 1921. Using the then prevailing rate of exchange, 1.3 cents for 1 *koruna*, the purchase price paid for the entire property equalled 234 U.S. dollars. In 1925, Vendelin Duris died and his one-half interest in the property was valued for probate purposes at 5,000 *koruny*. Converting the *koruna* into U.S. dollars at 3 *koruny* for 1 U.S. dollar, the value of the entire fee amounted to 300 U.S. dollars. In 1921 Czechoslovak *koruna* did not enjoy such stability as later and for that reason the purchase price paid does not necessarily furnish a reliable basis for the valuation of real property in Czechoslovakia. Moreover, the value assessed by Czechoslovak authorities for probate purposes reflects a conservative value. For these reasons the Commission is of the opinion that the value of farmland in the area of Valtasur is more correctly stated, in the land values prepared and published by the Federal Agency for Equalization of Burdens (*Bundesausgleichsamt*),⁹ of the German Federal Republic, as 1260 *reichsmarks* (\$315) per hectare. Based upon such information and also upon information and evidence collected in the course of adjudicating claims against the Government of Czechoslovakia pursuant to Title IV of the Act, the Commission finds that the value of claimant's one-half interest in the 3½ Hungarian *jutro* or 1.45 hectare of farmland in question was two hundred thirty dollars (\$230.00), and concludes that claimant is entitled to compensation in such amount under Section 404 of the Act.

⁹ *Verzeichnis der Gemeinde-Hektarsaetze mit Alphabetischem Kreisverzeichnis der Vertriebsgebiete. Bad Homburg, Suppl. 5 at 278. (1956) (Ger. Fed. Rep.)*

The Commission finds it unnecessary to make determination with respect to that portion of the claim based upon savings account No. 772 with the *Uverne družstvo* of Valtasur because claimant stated in her letter of August 26, 1960 that the account was used by her daughters during their visit to Czechoslovakia and therefore her "claim for annulled money does not exist."

AWARD

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, this claim is allowed in part and an award is hereby made to MARY HRUSOVSKY in the principal amount of Two Hundred Thirty Dollars (\$230.00) plus interest thereon at the rate of 6% per annum from November 8, 1952 to August 8, 1958, the effective date of Section 404 of the Act, in the amount of Seventy-Nine Dollars and Thirty-Five Cents (\$79.35), for a total award of Three Hundred Nine Dollars and Thirty-Five Cents (\$309.35).

Dated at Washington, D.C.
January 3, 1962.

PARTIAL TRANSLATION OF LAW NO. 139/47 Sb.
(*Sbirka Zakonu* No. 62 of August 6, 1947)

Section 1

(1) Pursuant to inheritance proceedings agricultural property shall be divided among heirs only if the aggregate size of an agricultural unit exceeds:

- (a) in the area of beet economy—5 hectares;
- (b) in the area of grain economy—8 hectares;
- (c) in the area of potato economy—10 hectares;
- (d) in the area of pasture and hay economy—15 hectares; (referred to hereinbelow as "minimum permissible area").

(2) If the quality of the property involved in the proceedings does not correspond to the general economy in the area, or if the property is situated in different economic areas, the probate court shall request the advice of the appropriate Federation of Farmers' Cooperatives as to which economy sector should be applicable to the agricultural property in question.

(3) An agricultural property can be divided below the minimum permissible area among co-heirs only if the recipients of the inheritance would own, together with the inherited property, the minimum permissible area; otherwise, such a division below the minimum permissible area can be granted only for especially important reasons, as, for instance, whose orchards, vineyards, hops groves, etc. are part of the estate.

(4) Co-ownership of agricultural land may be permitted in the subdivision of agricultural property only if the physical shares corresponding to the ideal shares of the land, exceed the minimum permissible area.

(5) If the inheritance consists of agricultural property which does not exceed the minimum permissible area or where a division of the estate is possible only by allocating land of a lesser size so that ownership or co-ownership would be created which would include such lesser size, a determination as to how such property should descend to the heirs based upon the provisions of this law shall be made by the courts.

(6) The Government shall issue regulations for the designation of agricultural areas specified under subdivision (1).

Section 4

(1) If an agricultural property described in Section (1), subdiv. 5 is involved, the probate court shall attempt to bring about an agreement among the co-heirs as to who shall take over the property or how the property should be divided within the scope of Section (1); if no agreement can be reached, the court shall issue a decree in lieu thereof.

(2) If agricultural property other than that described in Section (1), subdiv. 5 is involved, the general rules regarding inheritance within the meaning of Section (1), subdiv. 1, 2 and 4 shall prevail.

Section 5

In determining the distributees called to inheritance by intestacy, consideration shall be given whether the distributee will work on the agricultural property himself and whether he has the qualifications to carry out the profession of a farmer. The court shall establish who is the distributee under the law of intestacy. If one or more heirs entitled to take the inheritance are considered to be qualified as farmers the transfer of farm property shall be determined according to the following principles if there are no other impediments to the inheritance:

- (a) Priority shall be given to older heirs over younger ones. Close relatives shall always have a priority over more distant ones and natural children over adopted ones.
 - (b) If the deceased had no descendants the surviving spouse shall be considered as an heir and in Slovakia even in the case if she is not called to inheritance by law, except when the marriage was dissolved for the surviving spouse's fault.
-

In essence, Section 6 provides that the court shall determine the amount the heir to whom the inheritance is granted has to pay (eventually in the form of a mortgage) to the bypassed intestate heirs.

Acquisition of ownership by inheritance.—Proprietary interests in property, the subject of claims filed under the 1949 Act, were

often acquired by claimants through testamentary succession or intestate distribution. Accordingly, questions of nationality and ownership, loss, and value of property often had to be resolved affirmatively with respect to the interests of both the claimants and their predecessors-in-interest. Additionally, in the course of reaching its decisions, the Commission had to identify the heirs under an applicable will or pertinent intestacy law, and/or determine the nature of the property inherited.

Probate administration under Czechoslovakian intestacy laws presented unique factual situations in claims filed pursuant to Title IV. The *Hrusovsky* claim was based, in part, upon interests in an agricultural enterprise located in Czechoslovakia, assertedly inherited by claimant from her father. Under Law 139/47 Sb. governing intestate distribution of agricultural property, the probate authority determined the distributees of the estate by considering whether the heir qualified as a farmer who would continue to work the farmland. The court then determined the amount of compensation payable to bypassed heirs by the heir in whom the inheritance vested. Thus, a farmer was given priority over nonfarmers and nonresidents in the distribution of an agricultural estate, and the value of the intestate share of bypassed heirs was satisfied by compensation, including money, other than interests in the estate property. The claimant herein, one of the bypassed heirs, asserted that her intestate share in the estate property was "taken" by the Government of Czechoslovakia. It was argued that the decree of the State Notariat, vesting the entire estate in one of the heirs who qualified under the provisions of Law 139/47 Sb., "took" property within the meaning of Section 404 of the Act, because it prohibited claimant, a national of the United States, from acquiring any estate property by descent.

In rejecting claimant's contentions, the Commission noted that "not all injuries suffered by a national of one state in the territory of another state are compensable through an international claim." Rather, a claim based on the loss of property within the meaning of Section 404, would prevail only if the action by the State Notariat "was a breach of duty or other international obligation owed to the claimant by the Government of Czechoslovakia." The Commission recognized that the administration of an international claims program is predicated on some act or omission on the part of the offending state in violation of international law. Under international law and usage as cited in *Hrusovsky*, the Government of Czechoslovakia, in the exercise of its sovereign power over real and personal property within its dominion, could regulate the class of heirs who may take under specified factual situations, prohibit aliens from taking property through descent and distribution, and prescribe the nature of any interests that might pass by way of testamentary succession or intestate distribution. The Commission therefore concluded that the Government of Czechoslovakia did not violate any international obligation by the decision of the State Notariat, and a prohibition against a national of the United States acquiring real property in Czechoslovakia by descent would not constitute a "taking" of that person's property within the meaning of Section 404 of the Act.

In a similar situation, the decision by the local probate au-

thority in Czechoslovakia indicated that claimant's mother died intestate and that, contrary to claimant's assertions and an unrecorded prior agreement between heirs submitted in support thereof, her entire estate consisting of interests in improved farmland passed to claimant's father, a resident of Czechoslovakia. The father was ordered to pay claimant the value of his intestate share. The Commission found that, at best, claimant had a debt claim against his father for his share in the mother's estate, and denied the claim on the ground that the record evidence did not establish that claimant inherited any interests in the subject property or that any property owned by him was nationalized or otherwise taken by the Government of Czechoslovakia. (*Claim of Stephen Dvoraczky*, Claim No. CZ-4490, Dec. No. CZ-1582.)

On the other hand, where claimant established that he inherited, as sole heir, the property of his father, mother, sister, and aunt, an award was granted for the value of the property when taken by the Government of Czechoslovakia. (*Claim of Ernest G. Wollish*, Claim No. CZ-2830, Dec. No. CZ-3126.) Similarly, where claimant's father and predecessor-in-interest died subsequent to the taking by the Government of Czechoslovakia of property owned by him, the Commission found that the father's claim for compensation was inherited by the claimant under the father's will. (*Claim of Mary Krainock*, Claim No. CZ-3814, Dec. No. CZ-3187, Order and Amended Proposed Decision.)

While applying the law of the *situs* with respect to inheritance of real property, as to personal property the Commission applied the law of the domicile of the deceased. Where an original claimant owned real property in Czechoslovakia which was nationalized, and died intestate subsequent to the filing of his claim with the Commission, while domiciled in the State of Texas, the Commission substituted his widow and daughter as parties claimant, applying Texas law on intestacy under which the widow inherited a one-third interest and the daughter a two-thirds interest in the claim. Although the claim was based upon a loss of real property, the loss had occurred prior to the death of the original claimant. His heirs inherited personal property in the form of a claim based upon the loss, rather than the real property itself; and the law of the domicile was for application rather than the law of the *situs*. (*Claim of Ruth Wayne, et al.*, Claim No. CZ-1267, Dec. No. CZ-2631.)

As in the case of other essential elements of a claim, the burden of proof with respect to inheritance of property was on the claimant. Where claimant averred that he had inherited certain improved real property but submitted no evidence in support thereof, the claim was denied. (*Claim of Carl H. Haas*, Claim No. CZ-3757, Dec. No. CZ-3287.) Another claimant received an award for the value of a $\frac{3}{10}$ interest in a house in Czechoslovakia which she had inherited from her husband in 1945, and which had been taken by the Government of Czechoslovakia in 1949. She asserted title to an additional $\frac{3}{20}$ interest in the house, allegedly inherited from her father-in-law who had owned a $\frac{6}{10}$ interest during his lifetime. However, claimant failed to submit evidence to establish the existence of facts under which she would

have inherited an interest in the property from her father-in-law, and this portion of the claim was denied. (*Claim of Mary Anne Lipper*, Claim No. CZ-3439, Dec. No. CZ-2433, 14 FCSC Semiann. Rep. 156 (Jan.-June 1961).)

An interesting issue was presented in a claim filed pursuant to Title IV in which wartime occurrences had so depleted an Austrian family foundation, created under a will, that its objectives were frustrated; and the remaining assets of the foundation were then taken by the Government of Czechoslovakia.

The evidence of record established that the "Alois Schweiger Foundation for His Fellow Countrymen and Relatives" was created under the will of Alois Schweiger for the purpose of helping his relatives and indigent persons in his native city. According to the provisions of the will and subsequent stipulations approved by the appropriate Czechoslovakian authority, a Board of Trustees, controlled by senior relatives of the testator, was charged with administering the property of the Foundation, consisting of real property located in Czechoslovakia, cash, and securities, and with paying fixed portions of the income to needy relatives and to certain classes of indigents, regardless of relationship. During World War II, Germany confiscated the assets of the Foundation, and disposed of all but one apartment house and a bank account which were taken by the Government of Czechoslovakia in 1945. The Commission reasoned that, as of the time of the taking, the charitable purposes for which the Foundation was established had been terminated and were impossible of accomplishment, and that the Foundation, as such, did not exist except as a legal fiction, being nothing more than an empty shell. The Commission was therefore confronted with the question as to the proper person or persons entitled to claim compensation for the confiscated property nominally held by the Foundation.

Since the Foundation's charter contained no provisions governing its termination or the disposition of assets should it be unable to perform or complete its responsibilities, the Commission examined the civil law of the *situs* in effect at the time of the confiscation (Austrian General Civil Code of 1811, as amended) and authoritative legal exposition thereof. The Commission concluded that since the purposes for which the Foundation had been created had become impossible of attainment, the trust had failed, and title to the property in question, in the name of the original trustees, reverted to heirs of the testator; and that such heirs were the owners of the property at the time of its taking by the Government of Czechoslovakia. Claimants, as those next of kin surviving who were nationals of the United States, were granted awards for the loss of their interests in the property. (*Claim of Ernest Schweiger, et al.*, Claim No. CZ-3040, Dec. No. CZ-3202, Final Decision, 17 FCSC Semiann. Rep. 286 (July-Dec. 1962).)

In a related claim, also filed by descendants of Alois Schweiger, the Commission set aside its original Final Decision denying the claim, on the basis of the findings contained in the *Claim of Ernest Schweiger, et al.*, *supra*, and granted an award to one of the claimants who satisfied the nationality requirements of Section 404 for the loss of interests in the assets of the Foundation. (*Claim of the Estate of Richard Schweiger, Deceased, et al.*, Claim No. CZ-3287, Dec. No. CZ-3033.)

Life estates and remainder interests.—Claimed property interests were subject to increment or diminution, as warranted by record evidence establishing interests in the subject property held by persons other than the claimants. Mortgage interests, as an illustration, are discussed in the annotations to *Claim of Kurt Schuster*, appearing at page 410. Another instance is that involving life estates. In one such claim, the evidence of record established that the mother of several claimants, herself a claimant, had a life estate created under a "Gift Agreement" relating to a one-half interest in certain improved real property taken by the Government of Czechoslovakia. The life estate of the mother and resultant remainder interests in the other claimants constituted "property" within the meaning of Section 401 (3) of the Act. The related claims were consolidated and a single decision was issued, granting awards to the claimants and evaluating their life and remainder interests by use of the Makehamized mortality table, as discussed in the annotations to *Claim of Anny Aczel*, appearing at page 81. (*Claim of Emil Rojko, et al.*, Claim Nos. CZ-3453, CZ-3454, CZ-3455, and CZ-3457, Dec. No. CZ-2354, 17 FCSC Semiann. Rep. 216 (July-Dec. 1962).)

Similarly, where decedent died intestate leaving real and personal property in Czechoslovakia, the Commission found, in accordance with the law of the *situs*, that his children inherited the stated property in equal shares, subject to a life estate in favor of the decedent's widow, and evaluated the life and remainder interests by use of the Makehamized mortality table. (*Claim of Mary Plaus, et al.*, Claim No. CZ-1108, Dec. No. CZ-2931.)

In the Matter of the Claim of

Claim No. CZ-3978
Decision No. CZ-734

SKINS TRADING CORPORATION

Against the Government of Czechoslovakia

Claims based on unsecured debts of nationalized concerns in Czechoslovakia denied under Section 404, Title IV of the 1949 Act in absence of annulment or repudiation thereof by Czechoslovakia. Taking of debtor's property did not constitute taking of property belonging to creditor.

PROPOSED DECISION

This is a claim against the Government of Czechoslovakia under Section 404 of the International Claims Settlement Act of 1949, as amended, by SKINS TRADING CORPORATION, a New York corporation. The claim is based upon a sum of money allegedly owed to the claimant by the firm of Arnstein & Pick

of Na Maninach 315, Prague VII, Czechoslovakia, a company assertedly nationalized by the Government of Czechoslovakia. Claimant contends that the nationalization of this company by the Government of Czechoslovakia constituted a taking of its property within the meaning of Section 404 of the Act.

Section 404 of the Act provides, *inter alia*, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

Section 404 of the Act does not purport to compensate United States nationals for every kind of loss or damage suffered by them as a result of action by the Government of Czechoslovakia but embraces only those claims which arose out of the nationalization or other taking of property of United States nationals. A majority of the Commission has consistently held in this regard that the nationalization of a debtor company does not constitute a taking of the property of a creditor of the nationalized company, where there has been no annulment or repudiation of the debt.¹ Obviously, a showing that property has been taken is a *sine qua non* for an award under a provision of law which affords relief solely for the "nationalization or other taking" of property. There is no showing in the instant claim that the debt which forms its *res* was ever annulled by the Government of Czechoslovakia so as to constitute a taking of the claimant's property;² and a mere failure on the part of the Government of Czechoslovakia to pay a debt will not give rise to a compensable claim under Section 404 of the Act.

The Commission also rejects the contention that even though the nationalization of a corporation is not a taking of its creditors' property, the nationalization results in a loss to the creditors, giving rise to a claim under section 404 "for losses resulting from the nationalization or other taking . . . of property." This argument is negated by the specific expressions in the Committee reports of both houses of Congress that the purpose of the legislation is to compensate United States citizens whose property was nationalized or otherwise taken subsequent to World War II by the Government of Czechoslovakia. This statement of purpose excludes a claimant who suffered a loss as a result of the taking of another person's property, unless he has succeeded to that person's claim. Even were this not so, such a claim would be

¹ *Claim of Universal Oil Products Company*, Claim No. RUM-30531, Dec. No. Rum-547.

² *Claim of John Stipkala*, Claim No. CZ-1616, Dec. No. CZ-135.

defeated by the weight of authority under international law to the effect that such losses as a creditor may suffer as a result of a wrongful act committed against his debtor are not the proximate result of the wrongful act, and are too remote or indirect to sustain an award to the creditor.³ Wartime events, postwar economic conditions, foreign currency control restrictions, and chaotic conditions in general very likely played a greater role in weakening the claimant's ability to collect the debt than did nationalization of the debtor. Final straws are not to be equated with proximate cause in the circumstances here under consideration.

Additionally, a reading of the legislative history of Section 404 of the Act leads to the conclusion that it was Congressional intent to exclude therefrom ordinary debt claims.

In testimony before the respective committees of the two Houses of Congress, the position of the Department of State was that: "The United States Government, in its negotiations with the Government of Czechoslovakia, has been seeking a lump-sum compensation settlement for the nationalization or other taking by that Government of American-owned property, not for creditors' claims." Pointing out that Congress could, if it wished, provide compensation for creditor claims (as, indeed it did, for certain limited Bulgarian, Hungarian, and Rumanian creditor claims in Title III by adding section 303(3)), the representatives of the Department said it "wishes to point out the basis upon which the Department has been negotiating with Czechoslovakia, and that such payments to creditors out of the limited fund would result in a diminution of recovery to the nationalization claimants."

The House and Senate Committee reports⁴ on the bills which became Public Law 85-604 and added Title IV to the Act, show unmistakably that the Congress did not wish to provide compensation under section 404 for creditor claims, but elected to utilize available funds as partial compensation for those claims which had been the subject of negotiations between the two Governments. Thus in the House Report, it is said, "At the present time, negotiations are being conducted with Czechoslovakia with respect to *claims which are the subject of this legislation*, with a view to obtaining a lump-sum settlement from that nation of all *such claims*. Unless an agreement is entered into before the expiration of 1 year after enactment covering *such claims*, the funds for the payment of *such claims* will be derived from the proceeds of the sale by the United States of

³ *Claim of European Mortgage Service B Corporation*, Claim No. HUNG 22020, Dec. No. HUNG 1600.

⁴ H.R. Rep. 2227, 85th Cong., 2nd Sess. (1958); S. Rep. 1794, 85th Cong., 2nd Sess. (1958).

certain Czechoslovakian steel mill components. . . ." (Emphasis supplied.) The claims which are the subject of this legislation then are the claims which were (and are) the subject of negotiation, and do not include creditor claims.

Additionally, the following paragraph from the Senate Report on the bill is significant in showing the clear intent to restrict creditor claims to those authorized under section 403 and not to compensate such claims under section 404:

The committee recognizes that by limiting actions in the United States Court of Claims under section 403 to the claims of persons who have been deprived of property without just compensation it may not be affording relief to persons, such as creditors, who may have valid claims against Czechoslovakian debtors. It believes, however, that if any portion of the proceeds referred to in section 402 were allowed to be used for the satisfaction of creditors or other persons whose claims are not based upon an actual interest in the steel mill equipment or its proceeds, this action would deplete, perhaps seriously, the amounts which could be recovered by Americans whose property was nationalized by Czechoslovakia.

For the foregoing reasons, this claim must be, and it hereby is denied. The Commission finds it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D.C.

May 23, 1960.

Creditor claims.—The instant claim afforded the precedent for many ensuing decisions in which ordinary debt claims against Czechoslovakian debtors, not secured by mortgages on real property or by any other security, were deemed not to be within the scope of Title IV of the Act and were denied, in the absence of a repudiation or annulment of the debt by the Government of Czechoslovakia. The decision includes background material from the legislative history of the Title, showing the intention of the legislators to exclude ordinary debt claims from compensation. However, where a nationalized Czechoslovakian firm was merged into a national enterprise which subsequently acknowledged its indebtedness and agreed to pay, but thereafter the Czechoslovakian Government refused to authorize a transfer of funds on the ground that the obligation had been settled under a Czechoslovakian-Swiss Agreement of 1949 (which was not true), the Commission granted awards despite its general rule as to creditor claims under Title IV, concluding that the action of the Czechoslovakian Government constituted an annulment of the debt claim. (*Claim of Ella Wyman, et al.*, Claim Nos. CZ-4347 and CZ-4348, Dec. No. CZ-3529.)

In the absence of such annulment, claims based upon unsecured debts, such as dividends and loans payable, were denied under the general rule expressed in the claim of *Skins Trading Corporation*. (Claim of *Ann A. Unger, et al.*, Claim Nos. CZ-3137, CZ-3138 and CZ-3142, Dec. No. CZ-3538, 17 FCSC Semiann. Rep. 262 (July-Dec. 1962).)

A claim derived through a corporation which was a creditor of a Czechoslovakian company was also denied on the basis of the general rule that debt claims of unsecured creditors are not compensable under Title IV. (Claim of *Marietta J. Poras*, Claim No. CZ-3020, Dec. No. CZ-3528, 17 FCSC Semiann. Rep. 256 (July-Dec. 1962).)

Pensions and related claims.—Mere nonpayment of contractual retirement benefits due to claimant from the Central Union of Agricultural Cooperatives in Prague, an agency of the Czechoslovakian Government, was not considered a taking of property within the scope of Title IV in the absence of annulment or cancellation of the creditor's rights, and the claim was denied. (Claim of *Ladislav Karel Feierabend*, Claim No. CZ-2529, Dec. No. CZ-1423, 17 FCSC Semiann. Rep. 207 (July-Dec. 1962).) Nonpayment of retirement annuities due under the Czechoslovakian National Insurance Act of 1948 also was deemed as not constituting a taking of the property within the scope of Title IV of the Act. (Claim of *Charles Simonck*, Claim No. CZ-3147, Dec. No. CZ-2299, 14 FCSC Semiann. Rep. 174 (Jan.-June 1961).)

However, where a creditor's claim for salary, severance pay, pension, and similar benefits was expressly repudiated, the claim was allowed. (Claim of *Toni Felix*, Claim No. CZ-2097, Dec. No. CZ-2322, 17 FCSC Semiann. Rep. 231 (July-Dec. 1962); Claim of *Ervin P. Herner, et al.*, Claim Nos. CZ-2408, CZ-3255, and CZ-3290, Dec. No. CZ-2170, 17 FCSC Semiann. Rep. 266 (July-Dec. 1962); and Claim of *Joseph Smolik*, Claim No. CZ-4032, Dec. No. CZ-3417.)

Bank deposits.—On November 1, 1945 the Government of Czechoslovakia introduced a monetary reform by Decree of the President No. 91 45 Sb. and replaced the old currency with new *koruna* at the ratio of 1 : 1. At the same time, all bank accounts in old *koruna* in Czechoslovakia were blocked. In 1947 all such accounts were transferred to a special Currency Liquidation Fund, and were annulled, effective June 1, 1953, by Law 41 53 Sb. The Commission held that the blocking of accounts in 1945 did not constitute a nationalization or other taking of property, but that the annulment on June 1, 1953 of all bank accounts established prior to November 15, 1945 was a taking of property. Awards were made on claims or portions of claims based upon such "old *koruna*" deposits. (Claim of *John Stipkala*, Claim No. CZ-1616, Dec. No. CZ-135, 17 FCSC Semiann. Rep. 191 (July-Dec. 1962).) Bank deposits in "new *koruna*," established after November 1, 1945, were not blocked in 1945 or annulled in 1953. Many holders of such accounts suffered financial loss as a result of the gradual depreciation in value of the new *koruna*, but recognizing that a state is not liable under international law for fluctuations in the value of its currency, the Commission denied claims based upon such losses. (Claim of *Karolin Furst*, Claim

No. CZ-1381, Dec. No. CZ-682, 17 FCSC Semiann. Rep. 199 (July-Dec. 1962).)

Some bank accounts were transferred during World War II by order of the occupation authorities to a so-called Property Office for the liquidation of Jewish-owned property in Bohemia-Moravia. A claimant contended that after the war such funds came into the hands of the Government of Czechoslovakia and that they should have been restored to the original owners by that government. However, the Commission found that the Government of Czechoslovakia never controlled these funds and could not restore them to the owners, and denied the claim on the ground that it had not been established that the bank account had been taken by the Government of Czechoslovakia after January 1, 1945. (*Claim of Alice Korter, Executrix of the Estate of Karl Korter, Deceased*, Claim No. CZ-2570, Dec. No. CZ-2943, 17 FCSC Semiann. Rep. 233 (July-Dec. 1962).)

Bonds.—Czechoslovakian Government bonds expressed in domestic currency (*koruna*) were blocked in 1945 and annulled by the Government of Czechoslovakia by a decree effective June 1, 1953. The cancellation of the creditor right was considered by the Commission as a taking of property which gave rise to a compensable claim. (*Claim of Claire L. Claus*, Claim No. CZ-1082, Dec. No. CZ-683, 17 FCSC Semiann. Rep. 201 (July-Dec. 1962).) However, bonds issued by the Czechoslovakian Government or by municipal subdivisions thereof, expressed in United States dollars, were not annulled by the aforesaid decree. The Government of Czechoslovakia undertook negotiations with representatives of bondholders, and agreements were reached which extended the due date and reduced the interest rates of the bonds. Accordingly, the claims expressed in United States currency were denied. (*Claim of Charles H. Sisam*, Claim No. CZ-1551, Dec. No. CZ-397, 17 FCSC Semiann. Rep. 197 (July-Dec. 1962).)

Also denied were claims concerning bonds expressed in gold francs issued prior to World War I by private Austro-Hungarian railroads for which Czechoslovakia had assumed servicing under a special agreement concluded in 1925. In 1950 a new agreement was signed between the bondholders and the Government of Czechoslovakia in which the latter promised to resume payment of interest. While the Government of Czechoslovakia failed to resume such payments, new negotiations started which had not been concluded by 1962. The Commission held that these bonds had not been repudiated or annulled, and that claims based upon such bonds were not compensable. (*Claim of Dora Frankenbusch*, Claim No. CZ-2474, Dec. No. CZ-2380.)

A claim based upon so-called lottery bonds (Czechoslovakian State Premium Housing Lottery Bonds of 1921) was denied because the record indicated that the Czechoslovakian Government invited all holders of such bonds to present them for payment by December 31, 1949. Claimant had been afforded an opportunity to present his bonds for payment and had declined to do so. The Commission held that his loss in connection with the bonds was not one resulting from nationalization or other taking of property. (*Claim of Emil Bohadlo*, Claim No. CZ-1734, Dec. No. CZ-379, 17 FCSC Semiann. Rep. 196 (July-Dec. 1962).)

Life insurance policies.—Claims based upon life insurance policies were treated in a similar way as those based upon bank accounts. Life insurance policies were blocked by the Government of Czechoslovakia as of December 31, 1945. The cash value of the policies was placed in blocked accounts, and the accounts were annulled on June 1, 1953. The Commission considered the proceeds of such life insurance policies to have been taken by the Government of Czechoslovakia, and granted awards based upon the cash value of policies as of December 31, 1945. (*Claim of Mary Anne Lipper*, Claim No. CZ-3439, Dec. No. CZ-2433, 14 FCSC Semiann. Rep. 156 (Jan.-June 1961).)

In the Matter of the Claim of

Claim No. CZ-1438
Decision No. CZ-2373

KURT SCHUSTER

Against the Government of Czechoslovakia

Mortgage on real property constituted "property" under Section 401(3), Title IV of the 1949 Act. Cancellation of mortgage pursuant to Law 31 47 Sb., effective March 17, 1947, constituted a "taking" of mortgagee's property rights under Section 404.

Claim based on interest due under real property mortgage prior to annulment or taking of mortgage by Czechoslovakia denied under Section 404 because claimant failed to establish that mortgage interest was also taken by Czechoslovakia. Award increased by interest at rate of 6% per annum from date of taking to August 8, 1958, date of enactment of Section 404.

PROPOSED DECISION

This is a claim in the amount of \$45,990.00 against the Government of Czechoslovakia under Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended, by KURT SCHUSTER, a national of the United States since April 7, 1933.

The claim is based upon a mortgage on improved real property located at Frydlant, Czechoslovakia, plus interest thereon from 1934, and for loss of personal property.

Section 404 of the Act provides, *inter alia*, for the determination by the Commission, in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

It follows from the congressional mandate to the Commission that there must be a showing, among other things, that the Government of Czechoslovakia *nationalized or otherwise took* the claimant's property, in order for the Commission to act favorably on the claim. A study of the laws which were in effect in Czechoslovakia with respect to mortgages reveals that pursuant to Law No. 31/1947 Sb. of March 17, 1947, mortgages recorded on property confiscated by the Government of Czechoslovakia under Law No. 108/45 Sb. were assumed by the Fund of National Reconstruction, an agency of the Czechoslovakian Government,¹ and cancelled.²

The Commission finds that claimant was the owner of a mortgage in the principal sum of 90,000 Czech crowns given to secure a loan on improved real property known as No. 789, Frydlant, Czechoslovakia; that the mortgage was recorded in the land register of Frydlant under Liber No. 1580; that the real property, subject to the lien of said mortgage, was taken by the Government of Czechoslovakia pursuant to Decree No. 108/45 Sb., which authorized the confiscation without compensation of property of persons of German ethnic origin; and that the value of the mortgaged property was in excess of the value of the subject mortgage.

The Commission further finds that the subject mortgage was an interest in property within the meaning of Section 401(1) of the Act which defines property as "any property, right, or interest" and that such mortgage was taken by the Government of Czechoslovakia without compensation upon the enactment of Law No. 31/1947 Sb., effective March 17, 1947.

The Commission, therefore, concludes that claimant is entitled to compensation in the amount of 90,000 Czech crowns plus interest as specified below at the rate of \$1.00 for 50 crowns for such taking under Section 404 of the Act.

With respect to that portion of the claim based on interest from 1934, no evidence has been submitted to establish that any interest that may have accrued on the mortgage either prior to or subsequent to the date of the confiscation of the subject real property was taken by the Government of Czechoslovakia. Consequently, the portion of the claim based on interest from 1934 is denied. On the other hand, interest from March 17, 1947, the date of cancellation of the mortgage, to August 8, 1958, the date of enactment of Title IV of the Act, is being allowed at the rate of 6% per annum.

Claim is also asserted for loss of furniture, furnishings and personalty stored in House No. 789, Frydlant, Czechoslovakia. In this connection, the records before the Commission disclose that

¹ Section 2, Subsection (1) of Law No. 31/1947 Sb., effective March 17, 1947.

² Section 2, Subsection (4) of the aforesaid Law No. 31/1947 Sb.

the Czechoslovakian authorities advised the American Embassy at Prague on January 1, 1949 that the personal belongings of the claimant had been shipped to Germany under the supervision of Richard Bilik, who signed the proper declarations, and who acted on behalf of the claimant herein, on March 9, 1947 and June 8, 1948, respectively. In view thereof, and since the record fails to establish that the subject personal property was nationalized or otherwise taken by the Government of Czechoslovakia, this portion of the claim is denied.

AWARD

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to KURT SCHUSTER, claimant herein, in the principal amount of One Thousand Eight Hundred Dollars (\$1,800.00), plus interest thereon at the rate of 6% per annum from March 17, 1947 to August 8, 1958, the effective date of Title IV of the Act, in the amount of One Thousand Two Hundred Thirty Dollars and Thirty Cents (\$1,230.30), for a total award in the amount of Three Thousand Thirty Dollars and Thirty Cents (\$3,030.30).

Dated at Washington, D.C.

June 7, 1961.

Mortgages.—Just as in claims against Yugoslavia under Title I of the 1949 Act the Commission held that unsecured creditors' claims were not within the purview of the Yugoslav Claims Agreement of 1948 (*Claim of Virginia Howard*, appearing at page 115), but that mortgages constituted "rights and interests in and with respect to property" (*Claim of Manfred Sternberg*, appearing at page 62), the Commission held in *Claim of Skins Trading Corporation* (page 405) that claims based upon unsecured and unrepudiated debts are not compensable against Czechoslovakia under Title IV, but granted an award in the instant claim based upon a mortgage. The evidence established that claimant was the owner of a mortgage recorded in the appropriate land register, given to secure a loan on improved real property. The real property forming the security was taken by the Government of Czechoslovakia under Decree No. 108 45 Sb., authorizing the confiscation without compensation of property owned by Germans, Hungarians, and by persons considered "illoyal" to Czechoslovakia. Pursuant to Law No. 31 1947 Sb., mortgages recorded on property confiscated under the aforementioned Decree were assumed by an agency of the Government of Czechoslovakia and cancelled. The Commission found that the subject mortgage "was

an interest in property" within the meaning of Section 401(3) of the Act, which was "taken by the Government of Czechoslovakia without compensation upon the enactment of Law No. 31 1947 Sb.," and concluded that claimant was entitled to an award for the amount of the mortgage, evaluated as of the time of such taking.

In a similar situation, the Commission made an award based upon the loss of a recorded mortgage. In addition to the loss of the mortgage, a portion of the claim was based on charges permitted under the mortgage or loan agreement to cover costs and fees expended by the creditor in the event it became necessary to institute court action or foreclosure proceedings. The Commission denied this portion of the claim on the ground that the charges constituted a contingent security, and that no evidence had been presented to establish that any such action or proceedings had ever been instituted, or that any such expenses were ever incurred. (*Claim of Anna Maria Schatten*, Claim No. CZ-2161, Dec. No. CZ-2315, 17 FCSC Semiann. Rep. 215 (July-Dec. 1962).)

Under the laws of Czechoslovakia, a mortgage had to be registered in order to be legally valid and effective. No lien on real property existed unless it was first entered in the real estate register and secured by the mortgage. The record in a claim based, in part, upon a loan stated to have been secured by a mortgage, disclosed that the mortgage was not recorded in the local land register. The Commission found that the creditor had only a personal claim against the debtor, which claim being based upon an unsecured debt was not compensable under Section 404, and denied this portion of the claim. (*Claim of August Housedorf, et al.*, Claim No. CZ-1236, Dec. No. CZ-2404.)

Generally, claims involving mortgages were denied when the evidence of record failed to establish the existence of a valid mortgage or a "taking" thereof by the Government of Czechoslovakia. Thus, a claim based on a promissory note assertedly secured by a mortgage on real property was denied for the reasons that claimant had not established that she had a valid mortgage, and further, that the transaction was a private one between claimant and her debtors, with the loss not involving any act for which the Government of Czechoslovakia was responsible. (*Claim of Marie Gramke*, Claim No. CZ-2216, Dec. No. CZ-2136.)

Valuation of mortgages.—Mortgages more often were involved in claims filed by the mortgagors—i.e., by the owners of property which had been nationalized, and which had been encumbered by mortgages at the time of such taking. In such a case the mortgage was of importance in determining the amount of the award. In calculating the value of a claimant's equity in the property, the total value of the property at time of taking was reduced by the value of the mortgage at that time. This often raised the question of whether the underlying debt secured by the mortgage had been satisfied. In one claim, the record disclosed that a mortgage was recorded as an encumbrance on real property. Claimant submitted an affidavit in which he stated, *inter alia*, that prior to his leaving Czechoslovakia in July 1938 he paid the entire outstanding balance of the mortgage. No corroborating evidence was submitted. The Commission found the evidence of record to be

insufficient to establish payment of the mortgage, and concluded that the amount of the mortgage was to be deducted in calculating the award. (*Claim of Ernest Lowenstein, et al.*, Claim No. CZ-2419, Dec. No. CZ-2381, 17 FCSC Semiann. Rep. 221 (July-Dec. 1962).) A claimant's contention that it was to be assumed that regular installment payments were made on a mortgage on his property, and that no deduction should be made in determining the value of his equity, was rejected in another claim where no supporting evidence had been submitted. (*Claim of Anne Liese Lee*, Claim No. CZ-1639, Dec. No. CZ-318.) The Commission's experience, involving many mortgages on real property in Czechoslovakia, provided no basis for a presumption of regular reduction of principal.

Interest on the mortgage.—In the *Schuster* claim, claimant as mortgagee alleged a loss of interest assertedly due under the subject mortgage prior to its cancellation, but submitted no evidence in support thereof. Accordingly, the Commission was constrained to deny this portion of the claim and limit the award to the unpaid principal amount of the mortgage, since evidence of record failed to establish that any interest which may have accrued on the mortgage was in fact "taken" by the Government of Czechoslovakia.

Interest on awards.—On the other hand, the Commission concluded that interest should be allowed on the award, consistent with the inclusion of interest in all certifications of awards under Section 404, at the rate of 6% per annum from the date of loss to August 8, 1958, the effective date of enactment of Title IV. Since claimant did not receive prompt and adequate payment on the date the claim arose, he was entitled to compensation for the loss of the use of such money, in terms of interest to the effective date of settlement.

In the Matter of the Claim of

Claim No. CZ-4113

Claim No. CZ-4123

Decision No. CZ-1022

MARY DAYTON, ET AL.

Against the Government of Czechoslovakia

Effective date of nationalization of Czechoslovakian corporations under Decree 100/45 Sb. was October 27, 1945 for purposes of Section 404, Title IV of the 1949 Act. Retention of national administration after that date, or subsequent disposition of corporation, did not change date of nationalization. Promise by Czechoslovakia to compensate for nationalization of corporation did not change date of nationalization or loss to later date.

FINAL DECISION

The Commission issued its Proposed Decision on these claims on June 30, 1960, a copy of which was duly served upon the claimants.

The Commission held, in the said Proposed Decision, that with regard to certain property said to have been inherited by PAUL DAYTON from his sister, the record lacked evidence to support a finding of ownership by PAUL DAYTON, and nationalization or other taking by the Government of Czechoslovakia subsequent to July 25, 1946, the date when he became a national of the United States; that certain personalty had been pilfered during the German occupation; and that all other property in the claims was lost through nationalization on October 27, 1945, under Decree 100/45 Sb., or by confiscation before either of the claimants became nationals of the United States, and accordingly, the claims were denied.

Claimants objected to so much of the Proposed Decision as held that "Akciova Spolecnost pro prumysl textilni ve Dvur Kralove" was nationalized by the Government of Czechoslovakia on October 27, 1945, and that other property was confiscated by the Government of Czechoslovakia before the claimants became nationals of the United States, raising the issues of the effective dates of such takings, specifically contending that Decree 100/45 Sb., was not self-executing and that "Akciova" was not nationalized until national administration was cancelled on January 4, 1947, that certain agricultural land was not confiscated by the initial decree of 1945, but on March 28, 1948, when the last appeal was dismissed, and further, that the remaining property subject of the objections, was under national administration until December 31, 1949, and that this should be found to be the date of taking by the Government of Czechoslovakia.

Full consideration having been given to the objections of claimants and to the arguments both written and oral, of their counsel, and of other counsel on the same issues, presented at a hearing held on November 18, 1960, and continued on January 11, 1961, the Commission is of the opinion that these claims must be denied.

A study of the language of Decree No. 100/45 Sb., and of later decrees regarding property nationalized thereunder, leads to the inescapable conclusion that when an enterprise was nationalized under Decree No. 100/45 Sb., ownership thereof passed to the State on October 27, 1945. We find nothing in the fact that an enterprise was under national administration before October 27, 1945, to prevent the vesting of ownership in the State on that date under the decree. The retention of a national administrator beyond October 27, 1945, and his removal at a later date, do not

alter the fact of State ownership since October 27, 1945. Subsequent decrees announcing the inclusion of a particular enterprise under Decree No. 100, or transferring the enterprise to a national enterprise, afford no basis for holding that the nationalization was not effective until such actions were taken. The effective date of nationalization under the decree was October 27, 1945, and the State's ownership of the property began at that time. (See *De Reitzes-Marienwert v. C.I.R.*, 21 T.C. 846.) That is the date of nationalization or other taking of the property within the meaning of Section 405 of the Act, which requires ownership by a United States national on that date if a claim is to be compensable.

Where property nationalized under Decree No. 100 45 Sb. was that of a corporation, the corporation must have been a national of the United States as defined in the Act on October 27, 1945, in order to satisfy the requirement of Section 405. If the corporation was not a national of the United States, a stockholder may file a claim based upon the loss of corporate assets, under the sanction of Section 406(b), which reads:

A claim under section 404 of this title, based upon a direct ownership interest in a corporation, association, or other entity for loss by reason of the nationalization or other taking of such corporation, association, or other entity, or the property thereof, shall be allowed, subject to other provisions of this title, if such corporation, association, or other entity on the date of the nationalization or other taking was not a national of the United States, without regard to the per centum of ownership vested in the claimant in any such claim.

Where a stockholder is a claimant, it is he, of course, who must have been a national of the United States on October 27, 1945, in order to satisfy the requirement of Section 405.

The Commission is not persuaded by the argument that in view of the provisions of Decree No. 100 45 Sb. promising compensation to corporations whose property was taken, there was no loss to the stockholders on the date of nationalization, and no claim arising under international law at that time. (See *De Reitzes-Marienwert v. C.I.R.*, *supra*; *United States v. S. S. White Dental Mfg. Co.*, 274 U.S. 398 (1927); *Eric H. Heckett v. C.I.R.*, 8 T.C. 841; *Weinmann v. United States*, 278 U.S. 474 (1928).) The effective date of nationalization under Decree No. 100 was October 27, 1945; and in view of the requirement of Section 405 of the Act, a stockholder in a corporation whose assets were taken under that decree, must have been a national of the United States on that date if he is to receive compensation as a claimant under the Act for the loss resulting from the nationalization. Subsequent acquisition of United States nationality will not suffice, even

though it be followed by a taking by the Government of Czechoslovakia of the stock certificates, since their value as measured by the worth of the enterprise which was taken on October 27, 1945, was lost on that date.

Regarding claimants' property which the Commission found was confiscated by measures other than Decree No. 100/45 Sb., it was urged by claimants that the filing of appeals from confiscatory decrees postponed the effective dates of taking. The Commission has fully considered the arguments made in support of this contention, and affirms its holding that the takings occurred before the claimants became nationals of the United States. The Commission does not decide whether the result might be different in a case where a claimant establishes that after the issuance of the decree of confiscation and pending the determination of his appeal from such decree, he remains in possession and control of the property, utilizing the fruits thereof. In the instant case, such circumstances have been neither alleged nor established. With respect to the contention that title continues in claimant until an entry of change of ownership is officially recorded, the Commission has held consistently that where a government takes property by public announcement, title passes at once and does not remain in the former owner until the ministerial act of recording has been accomplished.

The Commission, having carefully considered the entire record, concludes that the claims must be denied. Accordingly, for the reasons stated above, it is

ORDERED that the Proposed Decision is affirmed as the Commission's Final Decision and the claims are denied.

Dated at Washington, D.C.

February 20, 1961.

Taking of property.—Losses of property in Czechoslovakia occurred on various dates, as a result of many different governmental actions. The results of the Commission's study of the entire field were formulated in a number of Panel Opinions, summarized below.

Panel Opinion No. 3 concerned claims based upon loss of agricultural property which arose generally from the application of Czechoslovakian agrarian reform laws, principally Laws No. 44/48 Sb. and 46/48 Sb., both dated March 21, 1948. Neither provided for an immediate or automatic transfer of title to the land. It was concluded in this Panel Opinion that title to land expropriated under the agrarian reform laws did not pass to the

state by operation of law, but passed upon the issuance of a decision by local authorities applying the provisions of the law to a designated property. The claim arose on that date, and not on some possible later date of recording in the land register.

In Panel Opinion No. 4, the transfer of property into cooperatives or collectives under the agrarian reform laws was considered as amounting to a deprivation of the right of the owner to dispose of the property and to enjoy the benefits thereof. The practical effect was a permanent loss of the property; and this was construed as a taking of the property under Section 404 of the Act, the claim arising on the date the local authorities ordered the property turned over to the cooperative or collective.

Panel Opinion No. 5 concerned itself with the major nationalization decrees in Czechoslovakia. The first of these, Decree No. 100 45 *Sb.* nationalizing mining and heavy and medium-sized industry, Decree No. 101 45 *Sb.* nationalizing key enterprises in the food industry, Decree No. 102 45 *Sb.* nationalizing banking corporations, and Decree No. 103 45 *Sb.* nationalizing insurance companies, were published on October 27, 1945, which was found to be the date that ownership of the enterprises passed to the state. In the same manner, the state obtained ownership of enterprises on January 1, 1948 under Decree Nos. 114, 115, 118, 120, 121, 122, 123, 124, and 125, taking smaller industrial concerns, commercial and construction companies, printing plants, hotels, inns, health resorts, wholesale trade companies, and travel agencies. Foreign trade and international transportation companies were taken under Decree No. 119 48 *Sb.*, on the publication date of the Order of the Minister of Foreign Trade with respect to each company. The effective date of the Decree was deemed to be the date of taking for Decree No. 126 48 *Sb.* (breeding and seeding establishments, June 3, 1948), Decree No. 249 48 *Sb.* (agricultural and forest research institutions, November 19, 1948), Decree No. 311 48 *Sb.* (domestic transportation companies, December 22, 1948), and Decree No. 185 48 *Sb.* (medical and nursing institutions, January 1, 1949).

Certain governmental actions of 1945 and later are the subject of Panel Opinion No. 6. Decree No. 5 45 *Sb.* of May 19, 1945 provided for the placement under national administration of property considered essential to the national economy, and of property owned by absent persons and persons considered unreliable (not loyal to Czechoslovakia). Placing property under national administration was considered originally as a temporary measure, to be ended when the government decided whether to nationalize the property, return it to the rightful owners, or dispose of it otherwise; and applied to a large extent to property which had been alienated as a result of wartime persecution. However, beginning in 1948 some businesses were placed under national administration for the purpose of their liquidation. The panel concluded that placing property under national administration did not constitute a taking of property within the meaning of Section 404, except where a national administrator was appointed specifically for liquidation, in which case there would have been a taking of the property on the date of the order placing the property under national administration.

Decree No. 12 45 Sb. of June 21, 1945 and Decree No. 108 45 Sb. of October 25, 1945 ordered the confiscation of property of Germans, Hungarians, and persons not loyal to Czechoslovakia. Takings under these decrees were deemed effective on the date of decision of local authorities with respect to the property in question.

Decree No. 128 46 Sb. of May 16, 1946 provided for restitution proceedings in Czechoslovakian courts. Persons found unreliable were not eligible for restitution of property. Where property had been placed under national administration and restitution was denied, the date of the decision denying restitution was considered the date of loss. On December 21, 1949, restitution proceedings were suspended by the Czechoslovakian Government in anticipation of a claims agreement with the United States; and no action was taken thereafter. December 21, 1949 was considered the date of loss where a claimant's application for restitution was never acted upon, or where restitution was never applied for. On the other hand, if there was an outright confiscation or nationalization of property before or during restitution proceedings, the claim arose on the date of such actual taking of the property.

Panel Opinion No. 7 initiated a concept of constructive taking of property under Section 404 of the Act. Law 80/52 Sb. of January 1, 1953 compelled owners of buildings, other than one-family dwellings, with a gross annual rental of 15,000 crowns or more, to deposit the rent in special accounts which were used largely for the payment of taxes, and the remainder for repairs. The panel concluded that this should be considered a constructive taking of the property on January 1, 1953, at which time the owner was precluded from the free and unrestricted use of the property and its fruits, even though he remained the record owner. A subsequent nationalization or confiscation of the property would not alter this date of loss; but in case of an earlier nationalization or confiscation of the property, the earlier date would be the date of loss.

Determination of the date of loss of property was a decisive element in many claims, in view of the requirement of ownership by a United States national on that date. It also provided the date from which interest was to be computed in claims resulting in awards. The conclusions reached in the Panel Opinions were not binding upon the Commission or its staff, but served as guidelines only. For the most part, they later became holdings of the Commission as decisions were rendered on claims involving the various decrees and factual situations described.

Date of loss under major nationalization decrees.—In the *Dayton* claim, a corporation which had been placed under national administration on an earlier date, was nationalized by Decree No. 100/45 Sb. effective October 27, 1945. The claim was denied inasmuch as claimants, who owned stock in the corporation, were not nationals of the United States on the date of loss. The earlier placing of the property under national administration, as a temporary measure, was not deemed a taking of the property by the Government of Czechoslovakia. Had it been, the claim still would have been denied for lack of United States ownership at the time of loss. Claimants urged that the nationalization

decree was not immediately effective, and that the property was not taken until it was removed from national administration on January 4, 1947. The Commission held, however, that property taken under Decree No. 100 45 Sb. passed to the State on October 27, 1945, and that the retention of a national administrator beyond that date did not alter the fact of State ownership of the property since October 27, 1945. In a claim similarly denied because the claimant stockholders were not United States nationals on October 27, 1945 when a corporation was nationalized under Decree No. 100 45 Sb., the Commission rejected a contention that the taking did not occur until 1946 when the property was transferred to a national enterprise which had been created by the Czechoslovakian Government. The Commission found this transfer to have been merely a change in control of the property within the State. In the same decision, the Commission held that the date of loss was not altered by the fact that the nationalization decree contained a promise to pay compensation in the form of bonds, which promise was not fulfilled. The Commission held that the promise of compensation was illusory, and the loss occurred on October 27, 1945. A subsequent loss of the stock certificates did not alter the result, since their value was lost on October 27, 1945 when the corporation was nationalized, and the certificates then became worthless. (*Claim of Ralph M. Wyman, et al.*, Claim Nos. CZ-4345, CZ-4350, CZ-4353, CZ-4355, CZ-4356, Dec. Nos. CZ-2771-5 (17 FCSC Semiann. Rep. 277 (July-Dec. 1962).) Another claimant who owned stock in a corporation nationalized under Decree No. 100 45 Sb. on October 27, 1945 when he was not yet a United States national, urged the Commission to find that his loss occurred on a later date in view of Decree 95 45 Sb. of October 20, 1945 which required the deposit of shares of stock in Czechoslovakian corporations, and Decree 41 53 Sb. under which such shares were annulled. The Commission adhered to its holding that the loss occurred on October 27, 1945, stating that when the corporation was nationalized the shares of stock became merely evidence of a claim for compensation for such loss. (*Claim of Herbert G. Graetz, as Executor of the Estate of Emma Graetz, Deceased*, Claim No. CZ-3381, Dec. No. CZ-1421, 17 FCSC Semiann. Rep. 206 (July-Dec. 1962).)

National administration of property.—The *Dayton* claim provides an instance in which an early placing of property under national administration under Decree 5 45 Sb. of May 19, 1945 was deemed a temporary measure within the original purpose of the law, and not a nationalization or other taking of the property. Where property was placed under national administration for the first time on October 4, 1956, long after the 1946 provisions for restitution of property to its rightful owners and the 1949 suspension of all restitution proceedings, the Commission held the action to be a method of effecting a taking of the property, even though it remained recorded in claimant's name, and granted an award for the loss. (*Claim of Renata Estes*, Claim No. CZ-4115, Dec. No. CZ-3192, 17 FCSC Semiann. Rep. 245 (July-Dec. 1962).) However, where a business enterprise had been placed under national administration on September 27, 1950 for the purpose of liquidation, and following liquidation an amount repre-

senting the value of the firm was deposited in a bank account in claimant's name, the Commission found that the amount thus paid constituted adequate compensation and denied the claim. (*Claim of Robert Oser, et al.*, Claim Nos. CZ-2747, CZ-2748, CZ-2758, CZ-2800, CZ-4042, Dec. No. CZ-1767, 17 FCSC Semiann. Rep. 208 (July-Dec. 1962).)

Where the assets of a corporation were taken by the Government of Czechoslovakia on August 11, 1945 before claimant, a stockholder, became a United States national, the Commission denied the claim despite a showing that an entry was made in the Commercial Register reflecting a resolution of October 30, 1951 to liquidate the enterprise, and the deletion of its name from the register on February 25, 1954. The loss to the stockholders occurred when the assets first were taken, on August 11, 1945. (*Claim of Ludvik Kanturek*, Claim No. CZ-2730, Dec. No. CZ-2250, 17 FCSC Semiann. Rep. 214 (July-Dec. 1962).)

Restitution proceedings.—A finding that property was taken from a claimant on the date on which his request for restitution thereof was denied, is illustrated in *Claim of Jiri George Munk*, Claim No. CZ-2722, Dec. No. CZ-311 (17 FCSC Semiann. Rep. 194 (July-Dec. 1962)), which was denied because claimant was not a national of the United States on the date of loss. In cases where the property had been under national administration since 1945 and never restored to its owners, the date of loss was found to be December 21, 1949, when all restitution proceedings were suspended. (*Claim of Eric Walder*, Claim No. CZ-2594, Dec. No. CZ-196, 17 FCSC Semiann. Rep. 192 (July-Dec. 1962); *Claim of Aris Gloves, Inc.*, Claim No. CZ-1170, Dec. No. CZ-3035, 17 FCSC Semiann. Rep. 239 (July-Dec. 1962).) In one instance, where the assets of claimant's subsidiaries in Czechoslovakia consisted mainly of business machines leased to other firms, the evidence established that the assets were physically taken by the Government of Czechoslovakia on December 20, 1957, which was held to be the date of loss although the subsidiaries had been under national administration for several years prior thereto. (*Claim of IBM World Trade Corporation*, Claim No. CZ-4647, Dec. No. CZ-3142, 17 FCSC Semiann. Rep. 283 (July-Dec. 1962).)

Retroactive taking of property.—Certain nationalization decrees which were not enacted until April 28, 1948 expressly provided that ownership of the nationalized enterprises passed to the State on January 1, 1948. This was the case with Law 114/48 Sb., under which a textile mill in Slana, Czechoslovakia, was nationalized. The mill had been under national administration since 1945. Inasmuch as the claimant, who owned a one-half interest in the enterprise, did not become a United States national until January 27, 1948, the claim was denied, even though the nationalization decree was not enacted until April 28, 1948. The Commission thus gave effect to the retroactive provision of the decree, finding that the loss occurred on January 1, 1948. (*Claim of Gertrude A. Schwarz*, Claim No. CZ-1848, Dec. No. CZ-3425.) It is to be noted, however, that the mill had been under national administration since before January 1, 1948, and the decree of April 28, 1948 merely confirmed an already accomplished fact. In another claim, a wholesale food company had been placed under national

administration in 1945 and restored in 1947, only to be nationalized by decree of the Ministry of Foreign Trade dated March 18, 1949, pursuant to Law 119 48 Sb., purportedly taking the company as of January 1, 1948. Law 119 48 Sb. contained no retroactive provision, but directed the Minister of Foreign Trade to publish the names of enterprises being nationalized thereunder, and the dates of nationalization. Since the wholesale food company had been restored to its owners before January 1, 1948, and operated by them until the issuance of the decree of March 18, 1949, the Commission held that the taking occurred on the date of the Minister's decree, and gave no effect to its retroactive provision. (*Claim of John H. Lusdyk*, Claim No. CZ-3219, Dec. No. CZ-2517, 17 FCSC Semiann. Rep. 223 (July-Dec. 1962).) The same result was reached where a wholesale and retail textile business in Prague had been placed under national administration in 1945, restored to the claimants on June 9, 1947, and nationalized pursuant to Law 118 48 Sb. by decree of the Ministry of Domestic Trade dated December 29, 1948 and purportedly retroactive to January 1, 1948. The loss was held to have occurred on December 29, 1948, claimants having been in possession and control of the firm between January 1, 1948 and that date. (*Claim of Eric Lenhart, et al.*, Claim Nos. CZ-2122 and CZ-4111, Dec. No. CZ-3479.)

The taking on different dates under various decrees, of separate items of property belonging to the same claimant, is illustrated in *Claim of International Telephone and Telegraph Corporation*, appearing on page 429. For a decision holding that the loss occurred on the date of the physical act of taking property, rather than on a later date when the change of ownership was recorded in the land records, see *Claim of Miroslav Aloisius Kokes, et al.*, Claim No. CZ-1832, Dec. No. CZ-85, 17 FCSC Semiann. Rep. 188 (July-Dec. 1962).

Taking of agrarian property.—Where agrarian property with an area of less than 50 hectares was shown to have been owned by a national of the United States who was not physically present in Czechoslovakia to till the land, so that it came within the purview of Law No. 46 48 Sb., the Commission presumed that the property was taken by the Government of Czechoslovakia as of June 10, 1952 and granted an award, even though claimant was unable to produce evidence to establish that the law had been applied specifically to his land and it had been taken. (*Claim of Stefan Churma*, Claim No. CZ-4711, Dec. No. CZ-194 (Amended).) A similar presumption with respect to a taking of farm land exceeding 50 hectares in area, not tilled by the owner, was made in *Claim of Alexander Feigler*, appearing on page 425.

Constructive taking of rental property.—In the same manner, in claims involving buildings other than one-family dwellings, with a gross annual rental of 15,000 crowns or more, it was presumed without further proof that the rent was placed in a special account for taxes and repairs under Law 80 52 Sb. of January 1, 1953, resulting in a constructive taking of the property on that date. On this basis an award was made with respect to several buildings in *Claim of Alexander Feigler*, appearing on page 424. Where two of three houses owned in part by a claimant rented for

more than 15,000 crowns each, but the third house rented for less, the Commission made awards for claimant's interests in the first two as constructively taken on January 1, 1953, but denied the portion of the claim based upon the third building for lack of proof of the nationalization or other taking thereof between the date claimant became a national of the United States and the date of enactment of Title IV of the Act. (*Claim of John H. Lusdyk, supra.*) In another instance, three houses in Prague were found to have been constructively taken on January 1, 1953, but a portion of the claim based upon a house in Tabor, Czechoslovakia, belonging to the same claimant, was denied where its annual rental was only 4,000 crowns. (*Claim of Ida Pick*, Claim No. CZ-3152, Dec. No. CZ-2295, 14 FCSC Semiann. Rep. 150 (Jan.-June 1961).) Where a building clearly came within the purview of Law 80/52 Sb. of January 1, 1953, and claimant-owner did not become a United States national until January 18, 1954, the Commission granted an award after finding that the building was not taken until it was placed under national administration on October 4, 1956. No presumption of an earlier constructive taking was made, in view of evidence establishing that claimant remained in possession of the property and continued to enjoy its fruits after January 1, 1953, and until October 4, 1956. (*Claim of Renata Estes, supra.*) A like holding was made in similar circumstances in *Claim of Angela Froehlich Lipson*, appearing on page 387. On the other hand, in the *Feigler* claim (page 424), eight houses renting for more than 15,000 crowns each were found to have been taken constructively on January 1, 1953, even though there was a previous confiscation of the houses in 1946 as German-owned, under Decree No. 108/45 Sb., which confiscation was annulled by a decision of July 20, 1948 on the basis of representations made by the claimant and the American Embassy in Prague. At the same time a portion of the claim based upon a vacant lot in Bratislava, obviously not within the purview of the January 1, 1953 decree, was denied for lack of evidence of a taking thereof by the Government of Czechoslovakia.

Other property losses.—Another type of taking of property by the Government of Czechoslovakia occurred where land was purchased by the Government to build an air strip under contract dated November 25, 1950 which provided for payment of one-half upon approval of the contract and the remainder when title was recorded in favor of Czechoslovakia. Although the contract was approved and the recording accomplished, no payments were made. The Commission found that the sale was not voluntary, that the action of the Czechoslovakian Government constituted a taking of the property within the meaning of Title IV, and granted an award. (*Claim of Frantiska Gasparovic, et al.*, Claim No. CZ-4634, Dec. No. CZ-1154, 17 FCSC Semiann. Rep. 249 (July-Dec. 1962).) Other claims were denied because a nationalization or other taking of property by the Government of Czechoslovakia was not established, as in the case of a claimed loss of gold and jewelry left in Czechoslovakia when the government refused to grant a license for its export (*Claim of Erna Spielberg*, Claim No. CZ-2608, Dec. No. CZ-2466, 14 FCSC Semiann. Rep. 146 (Jan.-June 1961)), revocation by the Czechoslovakian Gov-

ernment of a previous grant of 50,000 crowns as compensation for losses sustained as a victim of National-Socialist persecution, when the law under which the grant was made provided for revocation and limited payments to citizens of Czechoslovakia (*Claim of Olga Loyd*, Claim No. CZ-2170, Dec. No. CZ-1075, 17 FCSC Semiann. Rep. 205 (Jan.-June 1962)), and loss due to destruction of a building by aerial bombardment on December 24, 1944 (*Claim of Margaret Hodermarsky*, Claim No. CZ-3792, Dec. No. CZ-9, 14 FCSC Semiann. Rep. 112 (Jan.-June 1961)). In the last-mentioned case, not only did the loss not result from a nationalization or other taking of property by the Government of Czechoslovakia, it also occurred before January 1, 1945, either of which removes it from the scope of Title IV of the Act.

In the Matter of the Claim of

Claim No. CZ-4067
Decision No. CZ-2714

ALEXANDER FEIGLER

Against the Government of Czechoslovakia

In absence of evidence to the contrary, farms in Czechoslovakia in excess of 50 hectares deemed taken on March 21, 1950 pursuant to agrarian reform laws. Award for farm land measured by average value of such land in area where located, in absence of better evidence. Value of improvements to real property determined by capitalizing rental income.

PROPOSED DECISION

This is a claim in the amount of \$125,000 against the Government of Czechoslovakia under Section 404, Title IV of the International Claims Settlement Act of 1949, as amended, by ALEXANDER FEIGLER also known as Sandor Feigler, a national of the United States since his naturalization on September 14, 1921. The claim is asserted for the nationalization or other taking of the following property:

- (1) One-third ($\frac{1}{3}$) interest in eight (8) houses located in Bratislava;
- (2) Farm land situated in the Community of Cierna Voda, Czechoslovakia;
- (3) 117 Certificates of shares of stock in the First Savings Association of Bratislava; and
- (4) Bank deposits in the Bratislava Savings and Loan Association.

Section 404 of the Act provides, *inter alia*, for the determina-

tion by the Commission, in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein owned at the time by nationals of the United States.

(1) Houses and City Property

The Commission finds that claimant owned:

A. A 16/60 interest in the following houses in Bratislava, Czechoslovakia:

1. 8 Banskobystricka St. (formerly Donner St.), Liber No. 893.
2. 10 Banskobystricka St. (formerly Donner St.), Liber No. 893.
3. 9 First of May Square (formerly Senne Square, Heumarkt), Liber No. 893.
4. 52 Cervena Armada Street (formerly Groessling Street), Liber No. 893.
5. 59 Zidovska Street (formerly Jewish Street), Liber No. 3552.
6. Palisady, Liber No. 3696.

B. A 5/20 interest in house

7. 9 Sladkovicova Street (formerly Vorosmarty Street), Liber No. 4792, Bratislava.

C. A 7/24 interest in house

8. 8 Smetana Street (formerly Hausberg), Liber No. 11341, Bratislava.

D. A 13/48 interest in a vacant lot

9. On Danube Embankment, Bratislava having an area of 728 square meters, Liber No. 10209, Bratislava.

The Commission further finds that in 1946 claimant's interest in the above-described property was confiscated by the Government of Czechoslovakia pursuant to Decree No. 108/1945 Sb. as property belonging to a person of German ethnic nationality. However, upon representations made by the claimant and by the American Embassy in Prague, the authorities in Bratislava by Decision No. 5605/1/VI of July 20, 1948, revoked the confiscation action relating to claimant's interest in the property.

Nevertheless, Czechoslovak Law No. 80/52 Sb., effective January 1, 1953, compelled owners of buildings with a gross rental income of 15,000 Czech crowns or more per year to deposit the rents in special accounts. From such accounts, a real property tax (45 to 50% of the gross rent) and other taxes were deducted. Additionally, at least 30% of the rent was then transferred into a building repair account. Thus, in Czechoslovakia, owners of buildings larger than one-family dwellings having a gross rental income of 15,000 Czech crowns or more per year were and are

precluded from the free and unrestricted use of their realty and the fruits of such realty. To all intents and purposes, owners of such property, despite the fact that they may have remained the record owners, lost all control over the property and were little more than collecting agents for the Czechoslovakian Government. In view of the foregoing, the Commission has concluded that improved real property having a gross rental income of 15,000 Czech crowns or more per year is considered as constructively taken by the Government of Czechoslovakia as of January 1, 1953.

The Commission finds that the houses described above under 1 through 8 were in the category of having a yearly gross rental income of 15,000 Czech crowns or more and that they were taken without compensation on January 1, 1953. The Commission further finds that the value of claimant's interest in the houses, after deduction of war damage and mortgages, was as follows:

| | |
|--|-------------|
| 1. 8 Banskobystricka St., 16 60 of Kc. 400,000----- | Kc. 106,667 |
| 2. 10 Banskobystricka St., 16 60 of Kc. 1,000,000----- | Kc. 266,667 |
| 3. 9 First of May Sq., 16 60 of Kc. 1,025,000----- | Kc. 273,333 |
| 4. 52 Cervena Armada St., 16 60 of Kc. 300,000----- | Kc. 80,000 |
| 5. 59 Zidovska Street, 16 60 of Kc. 180,000----- | Kc. 48,000 |
| 6. 61 Palisady Street, 16 60 of Kc. 1,050,000----- | Kc. 280,000 |
| 7. 9 Sladkovic Street, 5/20 of Kc. 560,000----- | Kc. 140,000 |
| 8. 8 Smetana Street, 7/24 of Kc. 250,000----- | Kc. 72,917 |

Claimant's total interest in the above houses----- Kc. 1,267,584

Note.—Converted into U.S. dollars at the rate of exchange of 2 cents for 1 Kc. equals \$25,351.68.

In evaluating the above houses, the Commission gave consideration, among other things, to their description furnished by the claimant and by Czechoslovakian authorities, to the yearly rental income estimated by the claimant which in some instances is corroborated by reports of the Government of Czechoslovakia, and to the fact that two of the houses (61 Palisady and 9 Sladkovic Streets) were slightly damaged during World War II. By capitalizing the rental income on the basis of approximately 7% per annum (or fourteen times the yearly income) the Commission used the valuation methods adopted by Czechoslovak Law No. 134, 46 *Sb.*, and the Rules of Valuation provided for by Announcements No. 1703 and No. 1704 of August 23, 1946 of the Czechoslovakian Ministry of Finance for the purpose of assessing property taxes. From the so-computed valuation figures were deducted the mortgages in the amounts of 175,000 and 168,000 Czech crowns, respectively, which encumbered the properties.

No evidence has been submitted regarding the taking by the Government of Czechoslovakia of claimant's fractional interest in the vacant lot situated at the Bratislava Danube Embankment.

In the absence of such evidence, no award can be granted for this lot.

The Commission, therefore, concludes that claimant is entitled to compensation under Section 404 of the Act for his interest in the above eight houses in Bratislava in the amount of \$25,351.68, plus interest as specified below.

(2) Farm Land in Cierna Voda

The Commission finds that claimant was the owner of approximately 96½ cadastral yutars (55 hectares) of farm land, including approximately ten (10) cadastral yutars of marshland, in the Community of Cierna Voda near Tallos, District of Galanta, Czechoslovakia. Such land had been originally rented out to tenants, but the Commission's records disclose that under the Czechoslovakian Agrarian Reform Act No. 46/1948 Sb. agricultural land in excess of fifty hectares which was not tilled by the owners was expropriated and turned over to the State. Based on such records, the Commission has concluded that, absent evidence to the contrary, agrarian property of an area of more than fifty hectares which was owned by a United States national who was not physically present in Czechoslovakia to till the land so owned by him was taken by the Government of Czechoslovakia without compensation as of March 21, 1950.

In view of the foregoing, the Commission finds that claimant's farm land in Cierna Voda was taken by the Government of Czechoslovakia without compensation on March 21, 1950.

Statistics and data with respect to land values in Czechoslovakia, namely, the Fifth Supplement to the Listing of Agricultural Property, published by the President of the German Federal Equalization Office, Bad Homburg, 1960, disclose that the equivalent dollar value of the average farm land in the area of Galanta, Czechoslovakia, was \$330.00 per hectare. However, since part of the land owned by the claimant was marshland, the Commission concludes that the average value of the subject land of fifty-five (55) hectares was \$300 per hectare and that the claimant is entitled to compensation under Section 404 of the Act in the amount of \$16,500.00 with the respective interest thereon.

(3) Shares of Stock

The Commission further finds that claimant was the owner of 117 shares of stock in the Bratislava First Savings Bank Corporation of 1,000 Kc. par value each, and that the said bank was nationalized without compensation by the Government of Czechoslovakia on October 27, 1945 pursuant to Decree No. 102/1945 Sb.

In computing the value of this stock, the Commission has considered the financial data from the "Compass" Financial Year

Book for 1944 for the State of Slovakia, including balance sheets and operating statements published therein. On the basis of all the evidence and information available to the Commission, the Commission finds that the value of such stock at the time of nationalization was 1,700 Kc. which, converted at two cents per 1 Kc. at the then prevailing exchange rate equals \$34.00 per share.

Accordingly, the Commission finds that claimant is entitled, for his 117 shares of stock in the aforesaid bank, to an award of \$3,978.00 plus interest thereon as specified below.

(4) *Bank Deposits*

Claimant asserts that he had on deposit with the *Bratislava First Savings Bank Corporation*:

Kc. 50,496.00 in Savings Book No. 52366
1,166.00 in Savings Book No. 35178
15,674.00 in Current Account
171,190.00 in Current Account;

with the *General Bank, Inc. in Bratislava*:

Kc. 1,610.00 in Savings Book No. 43080; and

with the *Discount and Trade Bank, Inc. in Bratislava*:

Kc. 2,046.00 in Savings Book No. 12061.

A study of the history of events with respect to bank deposits and savings accounts in Czechoslovakia reveals that pursuant to Law No. 41/53 Sb., effective June 1, 1953, those deposits which were made on or prior to November 15, 1945 in old currency were annulled by the Government of Czechoslovakia.

The Commission finds that the above-stated amounts totaling Kc. 242,182.00 in old currency were on deposit in claimant's favor in the aforementioned banks; that claimant's right to payment of these accounts was property within the meaning of Section 401(1) of the Act which defines property as any property, right or interest, and that this right to payment was taken by the Government of Czechoslovakia on June 1, 1953 by virtue of Section 7 of Law No. 41/52 Sb., which cancelled such right.

The Commission concludes with respect to this portion of the claim for bank deposits that claimant is also entitled to compensation at the rate of 2¢ per 1 Kc. for such taking under Section 401 of the Act in the amount of \$1,843.61 plus interest thereon as stated in the following table:

RECAPITULATION

| Property | Principal amount | Date of taking | 6 percent interest from date of taking to Aug. 8, 1958 | Total award |
|----------------------|------------------|----------------|--|-------------|
| 8 houses ----- | \$25,351.68 | Jan. 1, 1953 | \$8,522.47 | \$33,874.15 |
| Farmland ----- | 16,500.00 | Mar. 21, 1950 | 8,296.70 | 24,796.70 |
| Shares of stock----- | 3,978.00 | Oct. 17, 1945 | 3,050.45 | 7,028.45 |
| Bank deposits ----- | 4,843.64 | June 1, 1953 | 1,507.20 | 6,350.84 |
| Total ----- | \$50,673.32 | | \$21,376.82 | \$72,050.14 |

AWARD

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to ALEXANDER FEIGLER in the amount of Fifty Thousand Six Hundred Seventy-three Dollars and Thirty-two Cents (\$50,673.32) plus interest thereon at the rate of 6% per annum from the above specified dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the amount of Twenty-one Thousand Three Hundred Seventy-six Dollars and Eighty-two Cents (\$21,376.82) for a total award of Seventy-Two Thousand Fifty Dollars and Fourteen Cents (\$72,050.14).

Dated at Washington, D.C.
October 11, 1961.

Valuation of real property.—In addition to illustrating a presumption of taking of farmland under Law 46/48 Sb., and a presumption of constructive taking of a building under Law 80/52 Sb., as discussed in the annotations to the *Dayton* claim which immediately precede it, the *Feigler* claim is of interest for its demonstration of certain methods employed in the evaluation of property in the Czechoslovakian claims program. Although inspection of buildings was not possible, consideration was given to such elements as the date and type of construction, number of floors and rooms, dimensions, the presence of basement or attic, and utilities. Deduction was made for any depreciation in value due to war damage suffered before January 1, 1945, in order to determine the value of buildings at the time of their taking by the Government of Czechoslovakia after January 1, 1945. Where the record established the rental income of a building, its capitalization at 7% per annum or 14 times the yearly income provided a measure of value. In the absence of better evidence as to the value of farmland, the Commission employed statistical data of average farmland values in various Czechoslovakian districts and communities published in 1960 by the German Federal Equalization Office for use in compensating German owners of farmland who had been compelled to leave Czechoslovakia, with appropriate adjustments for character of

land. Outstanding mortgage indebtedness was deducted to determine the value of the claimant's equity in the property at the time of loss, as discussed in the annotations to *Claim of Kurt Schuster* appearing at page 410.

Award reduced by amounts received on account of same loss.—Section 407 of Title IV of the 1949 Act provided that "In determining the amount of any award by the Commission there shall be deducted all amounts the claimant has received from any source on account of the same loss or losses with respect to which award is made." Accordingly, once the value of a claimant's property at the time of its loss had been determined, a lesser amount was sometimes awarded after deduction of an amount the claimant had received from another source for the same loss, as in the case where a nationalized Czechoslovakian corporation had certain assets in the United States which had been vested by the Office of Alien Property. The value of claimant's stock in the corporation at the time of its nationalization was \$128,901.11, but claimant had received from the Office of Alien Property a share of the proceeds from the vested assets in the United States, amounting to \$47,121.64. The Commission's award to claimant for his loss in connection with stock in the corporation was \$81,779.47, representing the value of his stock minus the amount received from the other source. (*Claim of Walter Forman*, Claim No. CZ-1135, Dec. No. CZ-3525.)

Award not limited to amount claimed.—Where, on the basis of all the evidence of record, the Commission found the value of claimant's interest in nationalized property to have been greater than the amount stated in the claim, the award was made in the higher amount, the Commission deeming it unjust to limit the award to the claimed amount when the record revealed the value estimate of the claimant, who had been absent from Czechoslovakia for many years prior to the taking of his property, to have been unduly conservative. (*Claim of Paul P. Bukorinsky, et al.*, Claim No. CZ-2545, Dec. No. CZ-2436, 17 FCSC Semiann. Rep. 222 (July-Dec. 1962).)

Valuation of brewery rights.—A special situation affecting some real property values in Czechoslovakia existed in the form of brewery rights in Pilsen and certain other towns in the area of Bohemia. Some claimants, by virtue of ownership of real property, had the right to participate in the earnings of local breweries under usages which originated in the 18th century. These participations were in the nature of shareholders' rights in the breweries, and were attached to specific parcels of real property. Such brewery rights, generally only a fraction of a share or one or two shares, were duly recorded in the land books, and were transferred together with the real property to successive owners. The value of the brewery rights sometimes exceeded the value of the real property itself, as in cases involving the Citizens' Brewery (*Mestansky Pivovar*) in Pilsen, in which one share was valued at \$40,450.00. In awards for losses of this type it was necessary to distinguish the date of taking of the realty (generally between 1918 and 1953) from the date of taking of the brewery rights, which in the case of the Citizens' Brewery

in Pilsen were lost on October 27, 1945 when the brewery was nationalized under Decree No. 100/45 Sb. The owner-claimant received an award for the total value only if the property was owned by a national of the United States on both dates. (*Claim of Joseph E. Luhan, et al.*, Claim No. CZ-1469, Dec. No. CZ-3244.)

For an example of methods of valuation of shares of stock in corporations, see the following *Claim of International Telephone and Telegraph Corporation*.

In the Matter of the Claim of

Claim No. CZ-4227
Decision No. CZ-3215

**INTERNATIONAL TELEPHONE AND
TELEGRAPH CORPORATION**

Against the Government of Czechoslovakia

Award for nationalization of corporation measured by net worth of corporation on date of nationalization as shown by balance sheets, financial statements and other evidence of record. Claim denied in part because claimant failed to establish value of its equity in one entity nationalized by Czechoslovakia. Value of patents determined on basis of costs of investments in patents and patent applications less depreciation for periods during which they were exploited by owner. Exchange rates for Czechoslovakian currency determined to be: \$0.0347 per crown in 1938; \$0.025 per crown in 1943; and \$0.02 per crown in the postwar period.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on March 28, 1962, granting an award based on the claimant's industrial interests and patents in Czechoslovakia; and denying certain portions of the claim. A copy of the Proposed Decision was duly served upon the claimant.

Claimant filed objections, submitting a brief and additional evidence in support thereof. Pursuant to the claimant's request, a hearing was held on May 29, 1962, at which time claimant's representative presented argument and was granted leave to submit further documentary proof. Thereafter, under date of June 5, 1962, the claimant submitted additional documentation. Upon consideration of the entire record, it is

ORDERED that the Proposed Decision be amended as follows, and as amended be entered as the Final Decision on this claim:

Section 404 of the Act provides, *inter alia*, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, includ-

ing any rights or interests therein, owned at the time by nationals of the United States.

Section 405 of the Act provides as follows—

A claim under Section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

The claim was stated as follows:

| | Value of property | Percent claimed | Amount of claim |
|--|----------------------|--------------------|--------------------|
| (1) Telegrafia Ceskoslovenska Tovarna na Telegrafy, A.S.----- | | | \$336,394.04 |
| (2) Standard Electric Doms A.S.----- | Kc. 2,944,051 | 100 | 58,881.02 |
| (2) ISEC Receivable from Standard Doms ----- | Kc. 2,112,616 | | 42,252.32 |
| (2) Receivables of ISEC Subsidiaries from Standard Doms----- | Kc. 8,350,353 | | 167,007.06 |
| (3) C. Lorenz A.G. Berlin: | | | |
| (a) Bank and cash balances: | | | |
| Ceska Eskomptni Banka, Prague ----- | Kc. 37,260 | 98.7 | 735.52 |
| Ceska Banka Union, Podmokly ----- | RM 255,000 | 98.7 | 50,337.00 |
| Cash on premises at Podmokly ----- | RM 3,773 | 98.7 | 744.80 |
| Allegemine Vorschusskasse- Chrast ----- | RM 237,000 | 98.7 | 46,783.80 |
| Deutsche Bank-Neutitshein-- | RM 9,534 | 98.7 | 1,882.00 |
| (b) Vrchlabi plant: | | | |
| Bank accounts: | | | |
| Dresdner Bank-Trutnov-- | RM 1,265,532 | 98.7 | 249,816.00 |
| District Savings Bank--- | Kc. 10,408 | 98.7 | 205.00 |
| Fixed assets ----- | RM 7,939,308 | 98.7 | 1,959,024.25 |
| Inventories ----- | RM 10,000,000 | 98.7 | 1,974,000.00 |
| (c) Podmokly (Bodenbach) plant-- | RM 1,700,000 | 98.7 | 365,000.00 |
| (d) Chrast plant ----- | Kc. 1,690,730 | 98.7 | 33,375.00 |
| (4) Mix & Genest A.G., Berlin: | | | |
| Jaromer Plant: | | | |
| Land and buildings ----- | RM 160,000 | 94.12 | 37,648.00 |
| Machinery testing equipment, etc. ----- | RM 1,117,000 | 94.12 | 262,830.00 |
| Inventory ----- | RM 3,354,000 | 94.12 | 631,357.00 |
| Cash on hand and in banks-- | RM 45,000 | 94.12 | 8,470.80 |
| Teplice-Sanov sales office ----- | Kc. 112,540 | 94.12 | 2,118.46 |
| (5) Ferdinand Schuchardt, A.G. | | | |
| Bruntal (Freudenthal) ----- | RM 621,500 | 99.57 | 140,419.00 |
| (6) ISEC bank accounts ----- | | | 51,974.43 |
| (7) ISEC patents ----- | | | 126,760.00 |
| Total ----- | | | \$6,548,015.50 |

The Commission finds that at all times relevant to this claim, the claimant (INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION) was the owner, directly or indirectly, of all of the capital stock of INTERNATIONAL STANDARD ELECTRIC CORPORATION (hereafter referred to as ISEC), a Delaware corporation which owned 100 per cent of BELL TELEPHONE CO. of Belgium (hereafter referred to as BELL) which in turn owned 99.99% of STANDARD ELECTRIC DOMS A.S., a Czechoslovak partnership (hereafter referred to as STANDARD DOMS); and that ISEC owned 32.44 per cent of TELEGRAFIA CESKOSLOVENSKA TOVARNA NA TELEGRAFY A.S., a Czechoslovak corporation (hereafter referred to as TELEGRAFIA), all of LE MATERIEL TELEPHONIQUE of France (hereafter referred to as MATERIEL), 90.70 per cent of STANDARD TELEPHON UND TELEGRAPHEN AS of Austria (hereafter referred to as STANDARD AUSTRIA), all of STANDARD TELEPHONE ET RADIO S.A., of Switzerland (hereafter referred to as STANDARD SWISS), all of CREED & CO., LTD., of England (hereafter referred to as CREED), and all of STANDARD TELEPHONE AND CABLES, LTD., of England, which latter in turn owned all of KOLSTER & BRANDES, LTD. Additionally, the Commission finds that at the earliest date pertinent to any part of this claim, the claimant owned 100 per cent of STANDARD ELEKTRIZITATS GESELLSCHAFT, A.G. (hereafter referred to as SEG), and 98.74 per cent of C. LORENZ A.G. (hereafter referred to as LORENZ). Further, the Commission finds that at the earliest date pertinent to any part of this claim, SEG owned 18.52 per cent of TELEGRAFIA, 94.1 per cent of MIX & GENEST A.G., 99.57 per cent of FERDINAND SCHUCHARDT BERLINER FERNSPRECH-UND TELEGRAPH-ENWERK A.G. of Germany (hereafter referred to as FERDINAND SCHUCHARDT) and 100 per cent of SUDDEUTSCHE APPARATE-FABRIK G.m.b.H. (hereafter referred to as SAF).

On May 11, 1954, MIX & GENEST and SAF merged with SEG, and claimant thus owned 94.1 per cent of the new SEG; its total interest in TELEGRAFIA was reduced to 49.86 per cent, and its total interest in FERDINAND SCHUCHARDT was reduced to 93.69 per cent. In May, 1956, SEG became known as STANDARD ELEKTRIK, A.G.

On April 23, 1958, LORENZ merged with STANDARD ELEKTRIK, A.G., the new company being known as STANDARD ELEKTRIK LORENZ, A.G. (hereafter referred to as SEL). Accordingly, claimant then owned 92.91 per cent of SEL (which figure is applicable to any of the properties of the former MIX

& GENEST, LORENZ, SAF, and SEG) ; claimant's total interest in TELEGRAFIA was 49.64 per cent and its total interest in FERDINAND SCHUCHARDT was 92.51% for purposes of any award which may be made in this matter. SEL owns 2.56% of STANDARD AUSTRIA.

Such ownership interests may be recapitulated as follows:
IT&T owned 100% of ISEC

ISEC owned 100% of BELL

BELL owned
99.99% of
STANDARD
DOMS

ISEC owned 32.44% of TELEGRAFIA

ISEC owned 100% of CREED

ISEC owned 100% of STANDARD TEL.
& CABLE
STANDARD TEL.
& CABLE owned
100% of
KOLSTER &
BRANDES

ISEC owned 100% of LE MATERIEL

ISEC owned 90.70% of STANDARD
AUSTRIA

ISEC owned 100% of STANDARD
SWISS

IT&T owned 100% of SEG until 1954

SEG owned 18.52% of TELEGRAFIA

SEG owned 94.1% of MIX & GENEST

SEG owned 99.57% of FERDINAND
SCHUCHARDT

SEG owned 100% of SAF

SEL owned 2.56% of STANDARD
AUSTRIA

IT&T had owned 98.74% of LORENZ

After the merger of May 11, 1954, claimant owned 94.1% of SEG and as to:

TELEGRAFIA, $49.86\% (94.1\% \times 18.52\% - 17.42\%, \text{ plus } 32.44\%)$

FERDINAND SCHUCHARDT, $93.69\% (94.1\% \times 99.57\%)$.

After the merger of April 23, 1958, claimant owned 92.91% of SEL ($94.1\% \times 98.74\%$) and as to:

TELEGRAFIA, $49.64\% (92.91\% \times 18.52\% - 17.20\%, \text{ plus } 32.44\%)$

FERDINAND SCHUCHARDT, 92.51% (92.91% x 99.57%)
STANDARD AUSTRIA, 93.07% (92.91% x 2.56% x 2.37%,
plus 90.70%).

The record reflects other changes in the corporate structure, as follows:

By 1954 SEG's interest in MIX & GENEST increased to 94.37% ;

By 1954 ISEC held 26.39% of SEG and by 1955 claimant held 68.79% of SEG, a total of 95.18% ;

After the war, claimant's interests in LORENZ increased to 99.13%.

In 1956 ISEC held the 95.18% of SEG; in 1956 ISEC took over the 99.13% of LORENZ, and as stated previously, in 1958 LORENZ merged into SEL, and ISEC's interest was 95.43%.

However, neither the increases nor decreases, after date of loss, in claimant's ownership interests, may form the basis for compensation under the Act, inasmuch as such percentages are not shown to have been owned by a United States national, or this claimant, continuously from the time of loss until the date of filing claim (See Sec. 405, *supra*).

It further appears, from a letter of December 7, 1949, from claimant's Czechoslovakian representative that the property of Frantisek Doms, a nominal partner in STANDARD DOMS, had been separated so that the remaining property in STANDARD DOMS belonged indirectly 100% to the claimant.

(1) TELEGRAFIA

TELEGRAFIA, engaged in the manufacture and sale of telephone and telegraph apparatus and dry cells maintaining headquarters in Prague and branch offices in Brno and Moravska Ostrava, with factories in Pardubice and Jablonne, was nationalized by the Government of Czechoslovakia pursuant to the provisions of Decree 100/45 Sb., effective October 27, 1945.

Claim is asserted for \$285,274.24, the equivalent of Kc 9,690,916 paid by ISEC in 1928 and 1929 for 19,462 shares of stock in TELEGRAFIA; and for \$51,119.80, the equivalent of Kc 2,555,-990, paid by SEG in 1940 for 11,113 shares of stock in TELEGRAFIA. The latter purchase was made from the AGRAR BANK, trustee for the Czechoslovakian Government, which subsequent to the enactment of Law 128/46 Sb., did not pursue any right it may have had to object thereto. In December, 1932, the investment of \$285,274 was reduced to par, or \$115,410 on the books of ISEC, as part of a program of this corporation in 1932 to revalue its assets more conservatively, including the write-down to the then market value of its minority holdings or

the closest equivalent to market value. However, claimant states that it was not permitted to examine the books of TELEGRAFIA and contends that when a taking is accomplished by a method which intentionally precludes valuation of assets, the measure of loss in terms of original investment is equitable.

The Commission has considered the above matters, as well as a 1938 balance sheet reflecting capital and surplus of Kc 12,213,260 (equivalent to \$423,800, converted at the then current rate of exchange of \$.0347 per crown); a 1943 balance sheet reflecting capital and surplus of Kc 26,059,903 (equivalent to \$651,497.57, converted at the then current rate of exchange of \$.025 per crown); a memorandum of November 29, 1946, submitted by ISEC to the American Embassy in Prague, stating in part that at the end of the war TELEGRAFIA had on hand about Kc 80,000,000 of unfinished war material manufactured for LORENZ, and that it was not known how much was salvageable, and further stating that, assuming the large amount of unfinished war material resulted in a substantial loss, it was conceivable that the equity for the stock interests of ISEC and SEG (in TELEGRAFIA) was wiped out on October 27, 1945, but that this could not be determined without an examination of the books. The balance sheet for 1944 was never received by claimant. The balance sheet for December 31, 1943 is set forth below:

| Assets: | Kc |
|---|------------|
| Plant, property, and equipment ----- | 43,407,253 |
| Less: Reserve for depreciation ----- | 33,075,367 |
| Subtotal ----- | 10,331,886 |
| Investments ----- | 725,350 |
| Special deposits and deferred charges ----- | 541,503 |
| Current assets: | |
| Cash ----- | 554,929 |
| Accounts receivable ----- | 15,191,098 |
| Inventory: | |
| Completed merchandise ----- | 10,199,192 |
| Raw material, work in process ----- | 47,841,498 |
| Installation in process ----- | 1,635,578 |
| Other current assets ----- | 277,769 |
| Subtotal ----- | 75,700,064 |
| Total assets ----- | 87,298,803 |
| Capital and liabilities: | |
| Capital stock ----- | 12,000,000 |
| Surplus ----- | 14,059,903 |
| Reserves for pensions and benefits ----- | 4,209,696 |

| | |
|-------------------------------------|------------|
| Reserve for contingencies ----- | 5,256,087 |
| Other reserves ----- | 1,059,004 |
| Current liabilities: | |
| Bank borrowings ----- | 17,903,576 |
| Advance payments by customers ----- | 6,402,432 |
| Accrued taxes ----- | 5,478,714 |
| Other accounts payable ----- | 20,929,391 |
| Subtotal ----- | 50,714,113 |
| Total capital and liabilities ----- | 87,298,803 |

It may be observed that when the item of 80,000,000 crowns for unfinished war material is considered in connection with the above balance sheet, it appears that the capital, surplus and reserve for contingencies are exceeded by about 48,684,010 crowns, the equivalent of \$973,680.20 (at the post-war rate of exchange of \$.02 per crown), exceeding the original investment. Although claimant contended that the production of a company such as TELEGRAFIA started from raw materials, including sheet steel, bar stock and copper wire, and resulted in carrier equipment, both telephone and telegraph, portable radio transmitters, transmitter and receiver sets, electro-medical equipment, which would produce a considerable inventory useable for peacetime production, the claimant also states that it was not possible to estimate how much of the Kc 80 million inventory was in fact useable for peacetime production.

The Commission has also considered claimant's contention that a property increase tax was imposed on the block of shares ISEC held in TELEGRAFIA, pursuant to Law 134 of May 15, 1946. It appears from claimant's Schedule A-1, submitted December 12, 1961, that ISEC itself reported said shares, at par value, for November 15, 1945, although by a letter to the Czechoslovak Ministry of Industry under date of November 5, 1945, claimant indicated it was aware that TELEGRAFIA had come within the purview of Decree 100, effective October 27, 1945. The Czechoslovak Ministry of Industry's Announcement No. 194, that TELEGRAFIA had been nationalized, was dated December 27, 1945, and the utilization of its properties by the Czech national enterprise TESLA was published on April 18, 1946. Further, claimant's letter of June 18, 1952 makes reference to a property tax assessment of Kc 4,083,770 on 19,387 shares of the block held by ISEC, although nothing further appears in the record as to this, but by letter of January 20, 1953, the Czech Government "attached" said shares in connection with a tax debt (discussed in Section (6), below).

The Commission has considered all the evidence reflecting claimant's investments in TELEGRAFIA. However, such evidence is not controlling insofar as the value of the property is concerned. The Commission finds that the record is insufficient to permit a determination of the value of claimant's equity in TELEGRAFIA on the date of nationalization. The burden of establishing the amount of the loss herein rests upon the claimant. Section 531.6(d) of the Commission's regulations (45 CFR) provides:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim.

The Commission holds that claimant has not sustained its burden of proof with respect to this part of the claim. Accordingly, this part of the claim is denied.

(2) STANDARD DOMS;
ISEC RECEIVABLE FROM STANDARD DOMS:
RECEIVABLES OF ISEC SUBSIDIARIES
FROM STANDARD DOMS

STANDARD DOMS, engaged in the assembling and installation of telephone apparatus and accessories, wire transmission systems, commercial radio and radio broadcast transmitting systems, etc., having a telephone factory, was nationalized without compensation by the Government of Czechoslovakia pursuant to the provisions of Law 114 48 Sb., effective January 1, 1948.

Claim is made for the net worth of STANDARD DOMS; for an account receivable due to ISEC from STANDARD DOMS, described as contract service charges, 1940 through 1947, in an amount of Kc 1,953,880 and interest from 1943 through 1947 in an amount of Kc 158,236; and further, for accounts receivable due from STANDARD DOMS to other subsidiaries of ISEC, arising from merchandise transactions, as follows:

| | |
|----------------------------------|---|
| Bell | 323,148 Belgium francs. 2,144,784 Crowns. |
| Standard Telephone and Cables .. | 29,070 British pounds sterling. 40,723 Crowns. |
| Creed | 142 British pounds sterling. |
| Materiel | 786,044 French francs. 1,500 Crowns. |
| Standard Austria | 9 Austrian shillings. |
| Standard Swiss | 228 Swiss francs. |

The net worth of Kc 2,944,051 is reflected in the balance sheet of STANDARD DOMS of November 30, 1947, which further shows the accounts payable to the parent company, and accounts payable to ISEC subsidiaries in a stated amount of Kc 8,350,-

352.64. The balance sheet for November 30, 1947 is set forth below:

Assets:

| | Kc |
|---|---------------|
| Plant, property, and equipment ----- | 5,254,706.79 |
| Less: Reserve for depreciation ----- | 3,813,456.97 |
| Subtotal ----- | 1,441,249.82 |
| Special deposits and deferred charges ----- | 516,774.20 |
| Current assets: | |
| Cash ----- | 1,747,720.05 |
| Receivables from ITT subsidiaries ----- | 1,346,703.70 |
| Other receivables ----- | 8,121,505.60 |
| Inventories: | |
| Completed merchandise ----- | 11,014,208.83 |
| Shop and installation ----- | 8,255,591.65 |
| Other current assets ----- | 6,952.50 |
| Total current assets ----- | 30,492,682.33 |
| Total assets ----- | 32,450,706.35 |

Liabilities:

| | |
|---|---------------|
| Capital stock, common ----- | 100,000.00 |
| Surplus including statutory reserves ----- | 2,844,051.21 |
| Employees benefit and pension reserve ----- | 145,078.20 |
| Other reserves ----- | 1,622,445.50 |
| Current liabilities: | |
| Payables to parent company ----- | 2,112,616.74 |
| Payables to ISEC subsidiaries ----- | 8,350,352.64 |
| Bank borrowings ----- | 2,413,057.90 |
| Other current liabilities ----- | 14,863,104.16 |
| Total current liabilities ----- | 27,739,131.44 |
| Total liabilities ----- | 32,450,706.35 |

Claimant contends that the liabilities of STANDARD DOMS to ISEC and to ISEC subsidiaries should be compensated as otherwise the Czechoslovakian Government "is completely released from these liabilities" and that therefore STANDARD DOMS becomes worth correspondingly more, its net worth being increased to Kc 13,407,020 or \$268,140, and that whereas the Czechoslovakian Government took the assets of STANDARD DOMS and assumed its liabilities, the omission of compensation to the claimant for said liabilities of STANDARD DOMS to the ITT System would create a "windfall" for the Czechoslo-

vakian Government. Moreover, the claimant contends that the accounts payable involved are due to the ITT System, owners of STANDARD DOMS, representing a different set of conditions than those applicable in the *Claim of Skins Trading Corporation* (FCSC Claim No. CZ-3978, Dec. No. CZ-734).

The Commission has considered all the above contentions. It appears that the transactions between STANDARD DOMS and the other entities, which gave rise to the claim for accounts receivable, were no different from similar transactions between any unrelated concerns; charges were made for goods sold and for services rendered, payments were made from time to time as in any case of an open account, and interest was assessed on unpaid balances. The Commission has determined that claims based on unsecured debts are not compensable under this statute. This does not deny that a claim for such debts exists but rather that the statute does not provide for such claims.¹ Accordingly, the portion of the claim for such accounts receivable is denied.

The Commission finds that the net worth of STANDARD DOMS is best shown by the balance sheet of November 30, 1947, and that this amount, Kc 2,944,051 converted at the rate of exchange prevailing in 1948, \$.02 per crown, equals \$58,881.02. It is concluded that claimant is entitled to compensation in this amount, plus appropriate interest.

(3) LORENZ

(a) Bank Accounts

In support of its claim for a bank account assertedly held in the Ceska Eskomptni Banka at Prague, claimant relies upon an assertion made in a 1949 Statement of Claim addressed to the Department of State and a copy of its registration (Prihlaska No. 1005) under Decree 95 45 Sb. Said Decree 95 45 Sb., provides that bank depositors shall register their accounts existing as of November 15, 1945, and pursuant to Decree 91/45 Sb., such "old crown" accounts were blocked. Generally copies of these registration statements were submitted to the appropriate bank which was required to confirm the existing balances as of November 15, 1945. In this case the document bears no acknowledgment by a bank of a balance as of November 15, 1945. With respect to three asserted accounts in Ceska Banka Union, Podmokly, Allegemine Vorschusskasse, Chrast, Deutsche Bank-Neutitschein, Novy Jicin, claimant relies upon audit reports of C. LORENZ, A.G., of Berlin, showing that blocked accounts were written off in 1948 as worthless, as well as upon affidavits.

¹ *Skins Trading Corporation, supra.*

Additionally, in connection with the asserted account in Ceska Banka Union, Podmokly, claimant has submitted a copy of its registration (Prihlaska No. 1004) which, however, bears no acknowledgment by the bank of a 1945 balance. Although the properties of LORENZ in Czechoslovakia were formally nationalized without compensation by the Government of Czechoslovakia pursuant to the provisions of Decree 100/45 Sb., effective October 27, 1945 (apart from certain other specific properties which may have been taken on other dates as discussed below), the Commission finds that the claimant has not sustained the burden of proving that any balances remained in these accounts on October 27, 1945. Accordingly, this part of the claim is denied.

Two additional bank accounts in the Okresni Zalozna Hospodarska of Vrchlabi and in the Dresdner Bank of Trutnov, which were registered under Decree 95/45 Sb. and established, are concerned with the net worth of a plant at Vrchlabi, discussed below.

(b) Vrchlabi

The Commission finds that the properties of LORENZ at Vrchlabi, consisting of a radio tube factory, were nationalized without compensation by the Government of Czechoslovakia pursuant to the provisions of Decree 100/45 Sb., effective October 27, 1945.

In valuing the property at Vrchlabi, claimant at first relied upon a balance sheet of August 14, 1945, summarized as follows:

| <i>Assets</i> | | <i>Liabilities</i> | |
|--------------------|-------------|-----------------------|-------------|
| | <i>Kc</i> | | <i>Kc</i> |
| Bank Accounts: | | | |
| Dresdner Bank, | | Creditors ----- | 3,050,013 |
| Trutnov ----- | 3,282,961 | Capital account ----- | 108,563,286 |
| Okresni Zalozna | | | |
| Hosp., Vrchlabi - | 10,408 | | |
| Fixed assets ----- | 106,319,930 | | |
| Inventory ----- | 2,000,000 | | |
| | | | |
| Total ----- | 111,613,299 | Total ----- | 111,613,299 |

Thereafter, claimant submitted the statement of WILHELM BRENNER, Comptroller of SEL, who gave the following net values for the plant, as of December 31, 1944:

| | <i>RM</i> |
|----------------------------|--------------|
| Fixed assets ----- | 3,439,308.45 |
| Production machinery ----- | 4,500,000.00 |
| | |
| | 7,939,308.45 |

It was further stated that there should have been an inventory of RM 10,000,000. No liabilities were given. To the figures sup-

plied by said WILHELM BRENNER, claimant added RM 1,265,-532 for the bank account at the Dresdner Bank, Trutnov, and Kc 10,408 for the bank account at Okresni Zalozna Hospodarska, Vrchlabi.

In determining the value of this item of claim, the Commission has considered all pertinent matter of record as described hereafter. Claimant's 1949 Statement of Claim asserted that in 1944 the plant investment was RM 11,750,000 and inventory was valued at RM 1,500,000. A report of A. PLOCEK, a former employee of the claimant in Czechoslovakia, of June 21, 1945, forwarded to the American Embassy at Prague, stated in pertinent substance as follows:

The valve factory was put into service in 1943 [a valve development plant at Novy Jicin had been removed to Vrchlabi]; the factory has a working space roughly estimated at 5,000 to 6,000 square meters; in 1943 and 1944 investments of about 65 million crowns were made. Mr. Koci was appointed as national administrator. Raw material is at hand for a period of about three months.

The evidence of record reflects some dispute as to whether the Vrchlabi plant constituted war booty subject to removal by the USSR, as that country contended. The record shows that the plant was dismantled to a large extent by the USSR, beginning December 7, 1945, despite strong protests that the United States would hold Czechoslovakia responsible for such removal. However, prior to this date, the plant at Vrchlabi was nationalized without compensation by the Government of Czechoslovakia pursuant to Decree 100 45 *Sb.*, effective October 27, 1945.

The Commission is of the opinion, after analyzing all the evidence, that the values listed on the said balance sheet of August 14, 1945, are more representative of claimant's loss than the values asserted for December 31, 1944, and further, that the said assets (Kc 111,613,299) included the property given by the Czechoslovak Government to the USSR commencing December 7, 1945. Accordingly, the Commission finds that the value of the entire plant at Vrchlabi, taken by the Government of Czechoslovakia was Kc 108,563,286 or \$2,714,082.15 converted at \$.025 per crown prevailing on October 27, 1945, and concludes that claimant is entitled to compensation in the amount of \$2,521,-653.73 plus appropriate interest for its 92.91% interest therein.

(c) Podmokly

The Commission finds that the properties of LORENZ in Czechoslovakia included a radar equipment and cyphering machine plant in rented premises at Podmokly (Bodenbach) of which the Government of Czechoslovakia took complete control

on June 6, 1945, to the extent that the claimant was excluded from the free and unrestricted use of its property and the fruits thereof. The Commission concludes that this action constituted a taking of property within the meaning of Section 404 of the Act.

In arriving at the value of this plant, the Commission considered a statement made on August 1, 1945, that the Russians had taken RM 100,000 of aviation radar equipment; a statement made on September 14, 1945, that the Russians were planning to remove additional material; a statement that the Russians took 38 cases of materials, contents and value thereof unknown, leaving 378 packing cases in the possession of Czechoslovakia; statements that the plant was established in March and April 1945, and that in May 1945, the assets of the plant were RM 1,700,000 (RM 500,000 for machinery and tools, and RM 1,200,000 for materials). Any property which might have been taken by the Russian Army prior to the Government of Czechoslovakia taking control of the plant would not be compensable under Title IV of the Act. However, the Commission finds that the value of the property on June 6, 1945, including property taken thereafter by the USSR, was RM 1,700,000 or \$425,000, converted at \$.25 per reichsmark, the rate prevailing on June 6, 1945, and concludes that claimant is entitled to compensation in the amount of \$394,867.50 plus appropriate interest for its 92.91% interest therein.

With respect to claim for cash in the amount of RM 3,773 on the company premises at Podmokly, the Commission finds that it has not been established that such cash was present and nationalized or otherwise taken by the Government of Czechoslovakia. Accordingly, this part of the claim is denied.

(d) Chrast

The Commission finds that the properties of LORENZ in Czechoslovakia included a telecommunication equipment laboratory and plant in rented premises at Chrast, of which the Government of Czechoslovakia took complete control on May 11, 1945, to the extent that the claimant was excluded from the free and unrestricted use of its property and the fruits thereof. The Commission concludes that this action constituted a taking of property within the meaning of Section 404 of the Act.

In determining the value of the properties at Chrast, the Commission has considered a statement of values as of May 11, 1945, upon which the claimant relies, as follows:

| | |
|---|-----------|
| | Kc |
| Measuring instruments ----- | 987,660 |
| Equipment of mechanical and technical working places ----- | 45,000 |
| Machine equipment ----- | 21,500 |
| Inventory of the office and shop equipment removed ----- | 141,000 |
| The existing office and shop equipment according to the inventory ----- | 75,570 |
| Stocks: | |
| Raw materials and tools ----- | 20,000 |
| Semi-manufactured products ----- | 250,000 |
| Wireless tubes ----- | 150,000 |
| Total ----- | 1,690,730 |

Further, the Commission has considered the above-mentioned report of A. PLOCEK, of June 21, 1945, which recites in part the following:

LORENZ transferred its carrier laboratory to Chrast during 1944. The laboratory was installed in rented buildings with a working area of about 1500 square meters. I am, however, informed that they have taken off all more costly instruments and equipment in time and transferred them to an unknown place, probably in Germany Bavaria . Practically only some drawing-tables have been left. What has been left has already been taken away by the Red Army as war booty.

Additionally the Commission has considered the newly submitted report of the claimant's representative made on the occasion of his visit to the property on May 11, 1945, to which he appended the aforementioned statement of values, and evidence that the "more costly instruments and equipment" which Mr. Plocek referred to, were excluded from the May 11, 1945 inventory, and that the measuring instruments and inventory of the office and shop equipment in the May 11, 1945 statement of values were present on that date.

On the basis of all evidence of record, the Commission finds that the value of the property on May 11, 1945 was Kc 1,690,730 or \$42,268.25, converted at \$.025 per crown prevailing on May 11, 1945 and that claimant is entitled to compensation in the amount of \$39,271.43 plus appropriate interest for its 92.91% interest therein.

(4) MIX & GENEST

The Commission finds that the property of MIX & GENEST in Czechoslovakia consisted of a telecommunication equipment plant on rented premises at Jaromer and its property in a sales office in Teplice-Sanov which were placed under national administration by the Government of Czechoslovakia. The report above-mentioned of A. PLOCEK, of June 21, 1945, stated that the property was then "under national administration and in a state

of liquidation.” Accordingly, the Commission further finds that the property at Jaromer and Teplice-Sanov was placed under national administration, on June 21, 1945, for the purpose of liquidation, and that such action was a taking of property without compensation by the Government of Czechoslovakia.

In determining the value of claimant’s loss, the Commission has considered, among other things, the communication of claimant to the Secretary of State, of April 16, 1949, stating as to MIX & GENEST, that it had a “telecommunication equipment plant in rented premises at Jaromer” with a net worth in June, 1945 of over Kc 11,000,000 “formulated on the spot at the time,” not including communication equipment valued at Kc 1,000,000 said to have been taken by the Czech Army. The plant valuation of June, 1945, follows:

| <i>Assets</i> | | <i>Liabilities</i> | |
|---|------------------|---|-------------------|
| | <i>Kc</i> | | <i>Kc</i> |
| Machine equipment ---- | 2,084,000 | Debts and invoices due -- | 1,210,975 |
| Shop and office equip- ment ----- | 1,633,000 | Obligation to the factory Policky & Reiker ----- | 750,000 |
| Tools and instruments in shop ----- | 50,000 | Estimated net worth --- | <u>10,107,025</u> |
| Measuring instruments - | 2,700,000 | | |
| Installation of electricity, water, heating, and air conditioning ----- | 2,300,000 | | |
| Articles in process of manufacture ----- | 2,200,000 | | |
| Stock and tools ----- | <u>1,101,000</u> | | |
| Total ----- | 12,068,000 | Total ----- | 12,068,000 |

Consideration has also been given to the affidavit of ALEXANDER G. P. SANDERS, Financial and Accounting Director, who states that he has determined that MIX & GENEST “during 1943 established a plant on rented premises in Jermer/Jaromer/, Czechoslovakia, for the assembly of carrier equipment. In May, 1945, the assets at the Jermer location were estimated” as follows:

| | <i>RM</i> |
|--|---------------|
| Land and buildings ----- | 160,000 |
| Machinery ----- | 254,000 |
| Tools ----- | 6,000 |
| Testing equipment and apparatus ----- | 780,000 |
| Other assets ----- | 77,000 |
| Inventory ----- | 1,700,000 |
| Drawings ----- | 1,500,000 |
| Payment on account ----- | 154,000 |
| Cash on hand and in banks, and postal checks ----- | <u>45,000</u> |
| Total ----- | 4,676,000 |

No liabilities are included in the above statement.

In connection with bank accounts, claimant submitted on October 17, 1960, a listing of three accounts as follows:

| | Kc |
|---|---------|
| Jaromer Postal Savings Office ----- | 118,851 |
| Zivnostenska Banka, Teplice Sanov ----- | 44,560 |
| Dresdner Bank, Teplice Sanov ----- | 663 |

Claimant stated that Audit Reports of MIX & GENEST do not show that these had been written off as worthless. Thereafter claimant tentatively withdrew claim based on a bank account of Kc 118,851 as it was not clear whether it was duplicated in the item "RM 45,000." Further, claimant submitted evidence of an attempt to register these accounts under Decree 95 45 Sb. (Prihlaskas Nos. 1006, 1007, and 1008). Additionally, there was filed a letter of February 10, 1947, from the Postal Savings Office at Jaromer to claimant stating that the application "for an account in the name of the management of the firm of MIX & GENEST at Jaromer should be filed by said firm as owner of the property under consideration." The accounts are further considered below in connection with the value of the Jaromer plant and of the Teplice-Sanov office.

The Commission has also considered the full report of A. PLOCEK, above-mentioned, of June 21, 1945, in connection with MIX & GENEST which reads in substance as follows:

MIX & GENEST set up a plant in Czechoslovakia for the manufacture of carrier equipment, after their factory in Berlin was bombed out in 1943. It was installed in rented buildings of a former textile factory in Jaromer in the east of Bohemia. The factory used about 2,000 square meters as working space, and employed about 600 people. I am, however, of the opinion that manufacture has not really been started there, perhaps only some assembly has been done. Piece parts for assembly have been brought from BELL ANTWERP. I learn, furthermore, that already during 1944 they had started to take off all worthy new machines, as automatic revolver-banks, punch presses, etc., installed shortly before and transferred them most probably to their work in Berlin which in the middle of 1944 has again been put into operation. Only a few old machines have been left. The factory is now under a national administrator and is in the state of liquidation. At this time the plant is occupied by the Red Army.

In the above mentioned communication of April 16, 1949, claimant stated its understanding that the Russians did not remove any property from Jaromer.

The Commission is of the opinion that the listing made “on the spot” in June, 1945, is more nearly representative of the claimant’s loss than the “estimate” for May, 1945. However, it is concluded that of the improvements (installation of electricity, water, heating, and air conditioning) totalling Kc 2,300,000, made at this plant, a portion thereof having a value of Kc 1,440,-000 cannot be considered to have remained the personal property of MIX & GENEST. Accordingly, the value of the assets has been reduced to Kc 10,628,000, to which may be added the “old crown” bank account, Kc 118,851, for a total of Kc 10,746,851. After deducting the liabilities, the value of the property of MIX & GENEST at Jaromer was Kc 8,785,876.

The claim as originally filed, was based on the aforesaid valuation made in June, 1945, with an additional item of Kc 1,000,000 for communications equipment. Thereafter, on October 17, 1960, claimant revised the basis for evaluation, relying on the affidavit of ALEXANDER G. P. SANDERS; and on March 15, 1961, claimant stated that the said item of Kc 1,000,000 for communications equipment could be assumed to be within the inventory in the May, 1945, estimate, and reduced the amount of its claim accordingly.

Additionally, the Commission has considered a report made after an inspection of the plant by the claimant’s representatives on August 6, 1945, which recites in part that:

35 portable units of completed single channel carrier equipments from this plant are stored at the headquarters of the Czechoslovakian military authorities at Jaromer and were seen during the first visit.

Accordingly the Commission finds that the total value of the property of MIX & GENEST pertaining to the Jaromer plant, was Kc 9,785,876 which, converted at the rate of \$.025, prevailing on June 21, 1945, is \$244,646.90, and the Commission concludes that claimant is entitled to compensation in the amount of \$227,-301.43 plus appropriate interest for its interest of 92.91 per cent therein.

In connection with the value of the property at Teplice Sanov, the Commission has considered the financial statement made by the national administrator on September 17, 1945, which includes the bank accounts in the Zivnostenska Banka and Dresdner Bank. The Commission finds that at the time of loss the value of this property was as follows:

| | |
|------------------------|------------|
| | Kc |
| Assets ----- | 116,119.10 |
| Less liabilities ----- | 3,578.80 |
| | <hr/> |
| Net worth ----- | 112,540.30 |

Converted at \$.025 per crown, prevailing on June 21, 1945, this is equal to \$2,813.51, and the Commission concludes that claimant is entitled to compensation in the amount of \$2,614.03 plus appropriate interest for its interest of 92.91 per cent therein.

(5) FERDINAND SCHUCHARDT

This company operated a portable army telephone manufacturing plant on rented premises at Bruntal.

The properties involved are shown in a report of April 16, 1949 as:

| | <i>RM</i> |
|---|-----------|
| Machinery, tools and furniture ----- | 334,500 |
| Raw materials, piece parts and completed sets ----- | 280,000 |
| Cash ----- | 7,000 |

It is asserted that raw materials, piece parts and completed sets were looted by the Russian Army in "May, 1945" and that the cash "disappeared." Inasmuch as it is not established that this occurred while the properties were under the control of the Czechoslovak Government, the Commission finds that this was not a nationalization or other taking by the Government of Czechoslovakia within the meaning of the Act, and this part of the claim is denied.

On about August 1, 1945, a Czechoslovakian firm applied for appointment as national administrator of the properties (pursuant to Decree No. 5 of May 19, 1945) which appointment was made on August 24, 1945. The record discloses that the machinery, tools and furniture were distributed to various Czechoslovakian firms, which effected a liquidation of the remaining properties of the plant. The Commission finds that the said national administration was imposed for the purpose of liquidation, that such action was a taking of property without compensation by the Government of Czechoslovakia, that the value of the property was RM 334,500 or \$83,625 converted at \$.25 per reichsmark, the rate prevailing on August 24, 1945, and that claimant is entitled to compensation in the amount of \$77,361.49 plus appropriate interest for its 92.51 per cent interest therein.

(6) ISEC BANK ACCOUNTS

Claim is made for bank accounts in the Czechoslovak State Bank as follows: (a) "old crowns" in the amount of Kc 2,515,539, (b) a "Special" account in the amount of Kc 80,159, and (c) an account in the amount of 3,023 "new crowns."

The record discloses as to account (a) that this was closed on January 11, 1952, by a transfer of 2,515,539.40 "old crowns" to

the District National Committee of Prague for "property taxes"; as to (b) which account was opened in 1948, having a balance of 80,159 crowns on December 31, 1951, that it was revalued pursuant to the provisions of Law 41/53 Sb., and had a balance of 11,522 crowns on December 31, 1956; and as to (c) that this account said to be in "new crowns" had a balance of 3,023 crowns on December 31, 1951, and that an amount of 3,000 crowns was transferred therefrom to the District National Committee of Prague, also on account of the aforementioned property tax.

Law 41/53 Sb., effected a monetary reform, and among other things, annulled blocked bank accounts in "old crowns" existing on June 1, 1953, and revalued accounts in "new crowns" established by Decree 91/45 Sb., but it did not annul the right to payment of bank deposits in "new crowns" made after such date. There is no evidence to show that the revalued account (b), or the balance of 23 crowns in account (c) have been taken by the Government of Czechoslovakia prior to August 8, 1958. Moreover, a prohibition against the transfer of funds outside of a country is an exercise of sovereign authority which, although it may cause hardship to nonresidents having currency on deposit within the country, may not be deemed a "taking" of their property within the meaning of Section 404 of the Act.²

With respect to the transfer of 2,515,539.40 "old" crowns, and another item of 3,000 crowns to the District National Committee of Prague, claimant has contended that the accounts represented principally payments for royalties that accrued during the war but that the tax (to which the accounts were applied) was computed in 1947 based on ISEC accounts receivable, patents, royalties and assets of STANDARD DOMS, nationalized January 1, 1948. Documentation submitted by claimant indicates that the following taxes were assessed upon property assertedly held by ISEC and STANDARD DOMS:

- (1) Kc. 4,225,250 --- Tax on property increase between January 1, 1939 and December 31, 1945, under Law 134/46 Sb.
- (2) Kc. 1,156,600 --- Capital Levy on value as of December 31, 1945, under Law 134/46 Sb. (after deducting (1) above).
- (3) Kc. 4,071,849 --- Tax on increase in value between December 31, 1945 and December 31, 1947, under Law 185/47 Sb. (after deducting (1) and (2) above).
- (4) Kc. 1,227,824 --- Tax on value as of December 31, 1947, under Law 185/47 Sb. (after deducting taxes above).

Kc. 10,681,523 --- Total.

² In the Matter of the Claim of Karolin Furst, Claim No. CZ-1381, Dec. No. CZ-682.

It further appears that as a result of non-payment, penalties were assessed: (a) in the amount of Kc 908,420 (total, Kc 5,133,670 on January 21, 1952); (b) in the amount of Kc 248,670 (total, Kc 1,405,270); (c) and (d) in the amount of Kc 794,940 (total Kc 6,094,613 by June, 1951, which apparently increased to Kc 6,578,206 by September 1, 1952).

The Government of Czechoslovakia applied the two bank accounts to the tax debt, attached the shares of TELEGRAFIA and royalties due from KABLO National Enterprise of Czechoslovakia (which had absorbed certain licensees of claimant and its subsidiaries).

It appears that in computing the property increase tax under Law 134/46 Sb., claimant sought exemption of an amount of Kc 5,589,902 and deducted it in the tax return on the ground that this figure consisted of an account receivable to ISEC from STANDARD DOMS and license fees from KABLO and TELEGRAFIA, which assets were in Czechoslovakia on November 15, 1945, solely because of inability to transfer them to New York, a circumstance beyond claimant's control. The Czechoslovakian Government restored the items as a basis for tax and denied the request for exemption.

Claimant further points: (1) to asserted duplication in the assessment base inasmuch as ISEC declared its capital investment in STANDARD DOMS and earned surplus, whereas the Government of Czechoslovakia then added the assets of STANDARD DOMS; and to schedules submitted by the claimant indicating that ISEC reported a net loss as of November 15, 1945 from its investment in STANDARD DOMS with which contention it appears the Government of Czechoslovakia did not agree; (2) to the fact that the assets of ISEC upon which taxes were based include the capital stock held in TELEGRAFIA, which had been nationalized pursuant to Decree 100/45 Sb., and that ISEC had itself reported these shares, at par value; (3) to the fact that various amounts added by the Government of Czechoslovakia could not be traced by the claimant to any financial statements, or otherwise identified; asserting that the Government of Czechoslovakia's program of capital levy and "millionaire's" taxes was conducted so as to overlap or pre-date nationalization of the properties upon which the taxes were levied; and contending that the bank accounts in question were "attached" and that this constituted nationalization.

The Commission has considered the above matters and the letter of December 7, 1949, from the claimant's Czechoslovakian counsel, explaining the revisions made by the Government of Czechoslovakia in the tax base. It appears that claimant, through

its subsidiaries, was not discriminated against in the application of the Czechoslovakian tax laws and that the Government of Czechoslovakia merely exercised its sovereign authority in applying the bank accounts in some satisfaction of the tax debt. It appears that by letter of September 15, 1958, the Czech Government advised ISEC of a total of Kc 2,442,885.08 then owed for various taxes.

Inasmuch as it has not been established that the Government of Czechoslovakia took any action with respect to the bank accounts in question which amounted to a nationalization or other taking of property within the meaning of the Act, this part of the claim must be and hereby is denied.

(7) ISEC PATENTS

This item of claim is based on costs of investments in patents, the total amount of \$126,760 being said by the claimant to represent the costs of filing applications, and maintaining patents that existed prior to the war. Claimant states that the discontinuance in 1952 by ISEC and its subsidiaries, of maintenance of patents and the prosecution of applications, was occasioned by the policy of the Government of Czechoslovakia pursuant to its nationalization program, although the German subsidiaries (LORENZ, MIX & GENEST and SAF) ceased maintenance after nationalization of Czechoslovakian industry. Claimant contends that the continued use of its techniques by Czechoslovakia without which the using enterprises could not operate, is a taking under the Act.

Claimant's patent claim in Czechoslovakia is stated as follows:

| | | Approximate average cost |
|-----------------------------|-----|-----------------------------|
| Patents in force: | | |
| ISEC ----- | 55 | \$225 |
| STANDARD DOMS ----- | 50 | |
| CREED ----- | 23 | |
| KOLSTER & BRANDES ----- | 2 | |
| STANDARD TEL. & CABLE ----- | 1 | |
| LORENZ ----- | 27 | |
| MIX & GENEST ----- | 3 | |
| SAF ----- | 1 | |
| | 107 | \$207 |
| | 162 | \$34,540 |
| Subtotal ----- | | |

| | | Approximate average cost |
|-----------------------|-----|-----------------------------|
| Applications pending: | | |
| ISEC ----- | 658 | \$120 |
| STANDARD DOMS ----- | 5 | |
| CREED ----- | 18 | |
| LORENZ ----- | 147 | |
| MIX & GENEST ----- | 2 | |
| SAF ----- | 1 | |
| | 173 | \$76 |
| Subtotal ----- | 831 | \$92,220 |
| Total ----- | | \$126,760 |

The figure of \$225 consists of filing (preparation) costs, \$70; fees, \$30; maintenance for 7½ years to 1952, \$75; and manpower hours expended in consideration thereof, \$50; the figure \$120 consists of local filing, \$70 and headquarters time, \$50. The items \$207 and \$76, for the German subsidiaries' patents and patent applications, was computed in like manner. It is further stated that the costs of patents and patent applications to ISEC and its subsidiaries was not capitalized and carried as an asset in the accounts as a matter of policy in effect for many years.

Claimant contends that a large proportion of its patents and patent applications were directed to telephone, switching apparatus, printing, telegraph apparatus, direct line and radio communication and aerial navigation, fields of burgeoning importance during the post-war years, and disclosed novel techniques which were of considerable commercial value at the time. It is said that these elements continue to represent techniques standardized throughout the world today. The claimant further states that in submitting a patent application, sufficient engineering data was included to demonstrate the technical working of the invention, that this is an obvious disclosure of the fundamental principles, and the mere filing of the application placed in the hands of the Czechoslovakian Government a vast potential of technical background.

The Commission has considered Czechoslovakian decrees listing patents among property taken; evidence that the Czechoslovakian Government placed a value on patents of ISEC and STANDARD DOMS in computing the taxes based on Law 134 46 Sb. although the patents involved and the basis for the evaluation are not shown; material in the book *Telephonic* published in 1958 by Czech Akademie Ved., concerning devices produced or used in Czechoslovakia, with its references to TELEGRAFIA

and STANDARD DOMS, bearing on the use by the Czechoslovakian Government of the property involved in the patents and patent applications; nationalization of three companies licensed to use methods and patent rights of ISEC and its associated companies; and that royalties due from KABLO NATIONAL ENTERPRISE, which absorbed CABLE MANUFACTURING CO., of Bratislava, KABLO CABLE & WIRE ROPE MILL CO., and KRIZIK CABLE CO., both of Prague (the three companies operating under license agreements with ISEC) were attached on January 20, 1953, although the amounts are not established.

The Commission finds that the patents outstanding and the pending applications for patents were for the uses set out below and that the Government of Czechoslovakia, without compensation, took the patents, and utilized the material filed with the pending applications, for the benefit of the economy of the Czechoslovakian State, on the dates indicated:

| | Taken | Claimant's interest (percent) |
|---|---------------|-------------------------------------|
| Patents outstanding: | | |
| ISEC—55: | | |
| 20 used by Telegrafia ----- | Oct. 27, 1945 | 100 |
| 15 used by Standard Doms ----- | Jan. 1, 1948 | 100 |
| 20 used by licensees, succeeded by Kablo National Enterprise ----- | Jan. 20, 1953 | 100 |
| Standard Doms—50 ----- | Jan. 1, 1948 | 100 |
| Lorenz—27 ----- | Oct. 27, 1945 | 92.91 |
| Mix & Genest—3 ----- | June 21, 1945 | 92.91 |
| Used by licensees (Kablo) | | |
| Creed—23 ----- | Jan. 20, 1953 | 100 |
| Kolster & Brandes—2 ----- | Jan. 20, 1953 | 100 |
| Standard Telephone & Cables—1 ----- | Jan. 20, 1953 | 100 |
| SAF—1 ----- | Jan. 20, 1953 | 92.91 |
| Patent applications pending: | | |
| ISEC—14 prewar: | | |
| 5 for Telegrafia ----- | Oct. 27, 1945 | 100 |
| 4 for Standard Doms ----- | Jan. 1, 1948 | 100 |
| 5 for licensees (Kablo) ----- | Jan. 20, 1953 | 100 |
| ISEC—644 postwar for Standard Doms--- | Jan. 1, 1948 | 100 |
| Standard Doms—5 prewar ----- | Jan. 1, 1948 | 100 |
| Lorenz—147 prewar ----- | Oct. 27, 1945 | 92.91 |
| Mix & Genest—2 prewar ----- | June 21, 1945 | 92.91 |
| Creed: | | |
| 17 postwar ----- | Jan. 20, 1953 | 100 |
| 1 prewar ----- | Jan. 20, 1953 | 100 |
| SAF—1 prewar ----- | Jan. 20, 1953 | 92.91 |

In determining the value of this item of claim, the Commission has considered the evidence of value attributed by the Czechoslovakian Government to patents of ISEC and STANDARD DOMS in the imposition of the taxes aforementioned, although the record does not reflect how the Czechoslovakian Government arrived at these figures. It is also noted that, with the exception of 31 patents registered in the German subsidiaries, the others (131 in number) were maintained for $7\frac{1}{2}$ years to 1952, although some were taken in 1945 and 1948. Accordingly, the Commission finds that the claimant is entitled to compensation under Section 404 of the Act, based on the aforementioned costs of investments in the patents and patent applications. It does not appear, however, that such maintenance fees paid after the patents were taken may be regarded as part of the claimant's loss within the meaning of the Act. Further, it appears that a depreciation factor is applicable as claimant recognized in submitting its tax return under Law 134/46 Sb.

The Commission finds that the claimant's interests in the patents outstanding at the time of their taking by the Government of Czechoslovakia had a value of \$26,945.37 and the claimant's interests in the pending patent applications had a value of \$90,362.89.

Recapitulation of award

| | <i>Principal award</i> |
|--|------------------------|
| Standard Doms ----- | \$58,881.02 |
| Lorenz: | |
| Vrchlabi plant ----- | 2,521,653.73 |
| Podmokly plant ----- | 394,867.50 |
| Chrast plant ----- | 39,271.43 |
| Mix & Genest: | |
| Jaromer plant, including bank accounts ----- | 227,301.43 |
| Teplice Sanov ----- | 2,614.03 |
| Ferdinand Schuchardt ----- | 77,361.49 |
| Patents outstanding ----- | 26,945.37 |
| Patent applications ----- | 90,362.89 |
| | <hr/> |
| Total ----- | \$3,439,258.89 |
| Interest -- ----- | 2,629,401.34 |
| | <hr/> |
| Total award ----- | \$6,068,660.23 |

Accordingly, it is

ORDERED that this award be restated as follows, and certified to the Secretary of the Treasury:

AWARD

An award is hereby made to the INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION in the principal amount of Three Million Four Hundred Thirty-nine Thousand Two Hundred Fifty-eight Dollars and Eighty-nine Cents (\$3,439,258.89) for industrial property, including patents, plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the aggregate amount of Two Million Six Hundred Twenty-nine Thousand Four Hundred One Dollars and Thirty-four Cents (\$2,629,401.34) for a total award in the amount of Six Million Sixty-eight Thousand Six Hundred Sixty Dollars and Twenty-three Cents (\$6,068,660.23).

Dated at Washington, D.C.

July 11, 1962.

Valuation of corporations and their assets.—The *International Telephone and Telegraph Corporation* decision depicts the complexity of tracing ownership through many corporate entities and determining the percentage of ownership held by a claimant or other United States nationals at various times, which was not uncommon in claims filed by American corporations. It also illustrates methods utilized in determining the value of corporations at the time of nationalization, and thus the value of shares of stock therein, starting with balance sheets for the most appropriate period of time available. In its treatment of a portion of the claim based upon an interest in *Telegrafia Ceskoslovenska Tovarna Na Telegrafy A.S.*, it contains a relatively rare instance in which, although the elements of ownership and loss were established, the claim was denied because the record was insufficient to permit a determination of the value of claimant's equity in the enterprise at the time of its nationalization. Not being in a position to find that claimant's interest had any value at the time of loss, the Commission was unable to make an award for this portion of the claim. The decision also demonstrates the evaluation of intangible property items, such as patents, on the basis of the investment cost for the patents, and on the basis of figures used for tax purposes, where available.

In some instances, where the record contained prewar balance sheets but claimant was unable to present postwar financial statements or other evidence of value at the time of nationalization,

the prewar balance sheets were used in determining the value of the fixed assets of the enterprise, such as land, buildings, and machinery; and in the absence of evidence of a persuasive nature that the firm had other assets at the time of taking by the Government of Czechoslovakia, awards were calculated only on the basis of the prewar fixed assets. (*Claim of Hedwig H. Mautner, et al.*, Claim Nos. CZ-1134, CZ-2052, CZ-2079, Dec. No. CZ-2978, 17 FCSC Semiann. Rep. 237 (July-Dec. 1962).) In many instances where claimant had no evidence pertaining to value of a nationalized corporation, the determination of value was based upon financial data extracted from the appropriate volume of *Compass*, the Financial Yearbook for Czechoslovakia, published by *Compass-Verlag* in Vienna, Austria, which often included balance sheets for corporations listed therein. (*Claim of John Lukac*, Claim No. CZ-2510, Dec. No. CZ-2230, 17 FCSC Semiann. Rep. 213 (July-Dec. 1962).)

Indirect losses.—The Commission consistently held that claims for indirect damages such as the loss of good will are compensable only if reasonably certain or susceptible of accurate determination. Good will generally is measured by prospective profits; and in the absence of evidence to show that a claimed item of good will was other than conjectural or speculative, the item was eliminated in the calculation of value. (*Claim of Ann A. Unger, et al.*, Claim Nos. CZ-3137, CZ-3138, CZ-3142, Dec. No. CZ-3538, 17 FCSC Semiann. Rep. 262 (July-Dec. 1962).) Claims based upon prospective earnings which may have been realized by an enterprise after its nationalization were denied because any such profits would not belong to the claimants, whose ownership interest in the enterprise was extinguished at the time of nationalization. (*Claim of Aris Gloves, Inc.*, Claim No. CZ-1170, Dec. No. CZ-3035, 17 FCSC Semiann. Rep. 239 (July-Dec. 1962).)

Exchange rates.—Evidence of value of property in Czechoslovakia generally was expressed in Czechoslovakian currency. In order to translate a sum in Czechoslovakian currency into an equivalent in United States currency, exchange rates had to be used which would reflect the dollar value as of the time when the valuation of the property was made. In the *International Telephone and Telegraph Corporation* decision, different exchange rates were employed for different dates, based upon the Commission's study of fluctuation in the value of the *koruna* as summarized in Panel Opinion No. 2. For the prewar years, the conversion rates were well established and posed no problem. For the years 1937-1938, the exchange rate was \$0.034 for one *koruna*. During the period when Czechoslovakia was under German occupation, the Czechoslovakian *koruna* was tied to the German reichsmark at the ratio of 10 *koruny* per reichsmark, or \$0.025 for one *koruna*. In 1945 a new Czechoslovakian currency was introduced, exchangeable at the rate of \$0.02 per *koruna*. For the years 1945 through 1952, this official rate of exchange was adopted by the Commission. After the Czechoslovakian monetary reform of June 1, 1953, the value of the *koruna* was fixed at a new official rate of \$0.139 for one *koruna*; but this exchange rate was artificial and unrealistic and little

weight was given to evaluations made after June 1, 1953. If no other source of evaluation was available, appraisals expressed in *koruny* of that period were converted at the more realistic rate of \$0.02 per *koruna*.

Where evaluations were submitted in currencies other than *koruny*, the appropriate exchange rates prevailing at the time of evaluation were used. For example, where evaluations made in 1938 in Swiss francs were on record, the Swiss franc was converted into dollars at the 1938 conversion rate of 4.372 francs for one dollar. (*Claim of Ella Wyman, et al.*, Claim Nos. CZ-4347, CZ-4348, Dec. No. CZ-3529.)



CLAIMS AGAINST POLAND

POLISH CLAIMS PROGRAM STATISTICS

Statutory authority: Title I of the International Claims Settlement Act of 1949, approved March 10, 1950 (64 Stat. 12, 22 U.S.C. §§ 1621-1627 (1964)), and the Polish Claims Agreement of July 16, 1960 (Agreement with the Polish People's Republic Regarding Claims of Nationals of the United States, July 16, 1960, [1960] 11 U.S.T. 1953, T.I.A.S. No. 4545 (entered into force July 16, 1960)).

Number of claims: 10,169.

Amount asserted: \$1,143,565,517.

Number of awards: 5,022.

Amount of awards: Principal, \$100,737,681.63.

Interest, \$51,051,825.01.

Amount of fund: \$40,000,000 (to be paid in 20 annual installments).

Program completed: March 31, 1966.



EDWARD KRUKOWSKI

Against the Government of Poland

Taking of oath of office by alien as civilian employee of the United States did not confer upon him status of a national of the United States as a person who, though not a citizen of the United States, owes permanent allegiance to the United States within meaning of Section 2(c)(2), Title I of the 1949 Act. Status of noncitizen nationals who "owe permanent allegiance to the United States" is limited to persons born in outlying possessions of the United States or born elsewhere of parents who possess that status.

FINAL DECISION

This claim, for \$232,197.00, is based upon an asserted ownership interest in a corporation which was nationalized by the Government of Poland on April 30, 1948. Claimant, who became a citizen of the United States by naturalization on May 9, 1949, urges that he has been a national of the United States since May 1, 1944, when he took an oath in connection with entering the employ of the United States Government, under which oath, assertedly, he owed permanent allegiance to the United States.

The term "nationals of the United States" is defined in Section 2(c), Title I, of the International Claims Settlement Act of 1949, as amended (64 Stat. 13 (1950), 22 U.S.C. § 1623(a) (1958)), as follows:

The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

In its Proposed Decision of April 4, 1963, the Commission found that the above-quoted definition of "nationals of the United States" was the same as that employed in the Nationality Act of 1940 (54 Stat. 1137 (1940); 8 U.S.C. § 1101 (1958)), from which it appeared that the reference to noncitizens owing permanent allegiance to the United States involved persons in certain outlying possessions of the United States, who were neither aliens nor United States citizens. It was held in that Decision that the definition does not include an alien residing in the United States who is an employee of the United States Gov-

ernment and has sworn allegiance thereto. Accordingly, the claim was denied on the ground that the property upon which it was based was not owned by a United States national at the time of its taking by the Government of Poland.

On appeal, counsel for claimant makes four main points: (1) that claimant's oath of May 1, 1944 made him a national of the United States as defined in the International Claims Settlement Act of 1949 and the Nationality Act of 1940, as a person who, though not yet a citizen of the United States, owed permanent allegiance to the United States; and that the Commission erred in finding that the statutory reference to "persons who . . . owe permanent allegiance to the United States" is limited to persons in certain outlying possessions of the United States; (2) that the conclusion that claimant became a United States national on May 1, 1944 can be reached independently, by application of established principles of international law, without reference to statutory definition; (3) that under Polish law and the theory of United States expatriation and naturalization law, claimant's oath of May 1, 1944 stripped him of Polish nationality, and effected his "naturalization" as a noncitizen national of the United States; and (4) that claimant was no longer an alien of the United States after May 1, 1944.

After full consideration of the exhaustive brief filed by counsel for claimant and his oral argument, and reexamination of pertinent statutes and authorities, the Commission adheres to its position that the term "national of the United States" is applicable only to those persons who though not citizens, owe permanent allegiance to the United States. The term "owing permanent allegiance to the United States" can have its origin only in the outlying possessions of the United States. In this respect the Commission finds itself to be in agreement with other federal agencies concerned with immigration and free access to the United States, registration of aliens, and issuance of passports.

The methods by which persons could become citizens or nationals of the United States were set forth, for the times pertinent herein, in the Nationality Act of 1940. The following are the provisions with respect to noncitizen nationals:

Nationals but not Citizens of the United States at Birth

Sec. 201. Unless otherwise provided in section 201 [which has to do with persons becoming nationals and citizens at birth], the following shall be nationals, but not citizens of the United States at birth:

(a) A person born in an outlying possession of the United States of parents one of whom is a national, but not a citizen, of the United States;

(b) A person born outside the United States and its

outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have resided in the United States, or one of its outlying possessions prior to the birth of such person;

(c) A child of unknown parentage found in an outlying possession of the United States, until shown not to have been born in such outlying possession.

Nationals but not Citizens of the United States; Residence Within Outlying Possessions

Sec. 321. A person not a citizen who owed permanent allegiance to the United States, and who is otherwise qualified may, if he becomes a resident of any State, be naturalized upon compliance with the requirements of this Act, except that in petitions for naturalization filed under the provisions of this section, residence within the United States within the meaning of this Act shall include residence within any of the outlying possessions of the United States.

The historical background relative to this section is contained in the following:

The history of section 30 (now section 321) * * * is, broadly speaking, as follows: As a result of the Spanish-American War, the United States acquired certain territory, the inhabitants of which were held to be neither aliens nor citizens of the United States. There was no way in which such persons, whatever their race, could be admitted to citizenship here, because they were not "aliens"; and [R.S.] section 2169 extended the benefit of our naturalization laws only to aliens. This left a large class of persons, of various races, who owed allegiance to the United States, but who were incapable of obtaining citizenship here, and were more unfavorably treated by our laws than aliens from foreign countries. To meet this situation section 30, *supra*, was passed. (*In re Mallari*, D.C. Mass. 1916, 239 F. 416.)

It has been the policy of Congress to facilitate the admission to American citizenship of such of the inhabitants of our insular possessions as under our general policy are racially qualified therefor.

As an illustration, under the treaty of peace between the United States and Spain, December 10, 1898 (30 Stat. 1754) whereby Spain ceded the Philippine Islands to the United States, Congress was authorized to determine the civil rights and political status of the native inhabitants of the Philippine Islands. By Act of Congress of July 1, 1902 (32 Stat. 691, 692) it was declared that all inhabitants who were Spanish subjects on April 11, 1899, and then resided in the Islands and their children born subsequent thereto, "shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the

protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain" according to the treaty. The citizens of the Philippine Islands were not aliens. They owed no allegiance to any foreign government but did owe allegiance to the United States (*Toyata v. U.S.*, 268 U.S. 402, 410-42 (1925)). Inasmuch as citizens of the Philippines owed no allegiance to the former sovereignty, Spain, the allegiance to the United States, upon the cession of the Philippines to the United States under the terms of the treaty, could have been nothing less than permanent. Subsequent enactment of laws dealing with nationality where reference is made to permanent allegiance can be interpreted only as having its origin in the outlying possessions and territories of the United States.

It is to be noted that there is no provision of law under which an alien might become a noncitizen national of the United States by taking an oath of allegiance to the United States, permanent or otherwise. The status of noncitizen national devolved only upon those born in outlying possessions or born elsewhere of parents already possessing that status. Under the provisions of Chapter III of the Nationality Act, an alien might, through his own actions fulfill the legal requirements for naturalization, moving from the status of alien to that of a citizen national of the United States; but no means have been provided for transforming an alien into a noncitizen national.

Section 301 of the Nationality Act of 1940 conferred upon certain courts exclusive jurisdiction to naturalize persons as citizens of the United States, and stated that a person could be naturalized "in the manner and under the conditions prescribed in this Act, and not otherwise." Had it been intended by Congress that aliens could become noncitizen nationals by taking an oath of allegiance in connection with entry into United States Government employment, certainly this method of obtaining the status would have been permitted specifically in addition to the others, and jurisdiction to effect it would have been conferred upon federal agencies administering such oaths.

The oath taken by claimant on May 1, 1944, or that portion thereof upon which he relies in this proceeding, reads as follows:

OATH OF OFFICE I, . . . , Do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.

Separate paragraphs, captioned "AFFIDAVIT" and "DEC-

LARATION OF APPOINTEE," concern membership in organizations advocating the overthrow of the Government of the United States by force or violence, and observance of Civil Service rules and related matters.

Although, as counsel points out, there is no time limitation in the wording of the oath, it is clear from its caption and the context in which it was taken that it was intended to be binding during the period of the employment for which it was a prerequisite. The oath is set forth in Civil Service Commission's Standard Form 61, Approved January 28, 1943, and was administered not only to aliens, but to citizens and noncitizen nationals as well. It bound the applicant to faithful discharge of the duties upon which he was about to enter, and, in our opinion, to support and defend the Constitution and to bear true faith and allegiance thereto as long as that employment continued. It matters not that this claimant continued in government employment until becoming a citizen through naturalization, and indeed was still a government employee at the time of filing the claim. The allegiance which he owed to the United States from May 1, 1944 to May 9, 1949, was a temporary allegiance, and did not acquire a permanent character by reason of this oath.

The taking of an oath of office by a civilian employee within the Federal Government does not enhance the citizenship status of an alien resident by doing so. The oath is only one of the terms of employment regardless of the nationality status of the applicant.

The obligation of temporary allegiance by aliens residing in a friendly nation is universally recognized under both domestic and international law.

The distinction between "permanent" allegiance and "temporary" allegiance was well defined by Mr. Justice Field in the *Carlisle* case as follows:

"By allegiance is meant the obligation of fidelity and obedience which the individual owes to the government under which he lives, or to his sovereign in return for the protection he receives. It may be an absolute and permanent obligation, or it may be a qualified and temporary one. The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign. The alien, whilst domiciled in the country, owes a local and temporary allegiance, which continues during the period of his residence." (*Carlisle v. U.S.*, 83 U.S. (16 Wall.) 147, 154, 155 (1872).)

Aliens owe no duty to, and are not required to render military

service. Those who have subjected themselves to this supreme obligation, nevertheless, did not acquire permanent allegiance to the United States by doing so.

An analogy may be drawn between the oath of office taken by the claimant and the oath taken by an alien who entered into the military forces of the United States. This oath, in effect during World War II, is as follows:

I, , * * * do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: * * *.

It is to be noted that individuals taking this oath are also sworn to support and defend the Constitution of the United States. However, this oath did not confer the status of permanent allegiance to the United States on those taking it and it does not bind the alien to subsequent United States citizenship. However, recognition for services performed by aliens in the military forces of the United States has been made to some extent, by reducing or modifying some of the requirements for naturalization.

Counsel's conclusion that claimant was a United States national after May 1, 1944, under principles of international law, admittedly is arrived at "by a kind of backward logic." The Commission cannot subscribe to this conclusion inasmuch as the Congress is given the exclusive power to establish a uniform Rule of Naturalization under the Constitution (Art. 1, Section 8, clause 4). The competence of Congress in this field merges, in fact, with its indefinite, inherent powers concerning foreign relations. In the words of the Supreme Court: "As a government, the United States is invested with all the attributes of sovereignty. As it has the character of nationality it has the powers of nationality, especially those which concern its relations with intercourse with other countries." (*Mackenzie v. Hare*, 239 U.S. 299, 311 (1915).) The argument is that when the oath was administered to claimant, the United States assumed the duty to protect him; that this was a duty to protect claimant abroad as well as at home; that only nationals of a state are entitled to its diplomatic protection abroad; and that claimant therefore became a United States national when he took the oath. In this connection, we find it necessary only to note a failure to establish that a duty on the part of the United States to protect

claimant abroad necessarily followed from the oath taken by claimant on May 1, 1944, particularly since the exercise of power to afford diplomatic protection abroad, even to its citizens, is discretionary with the sovereign. (See Borchard, *The Diplomatic Protection of Citizens Abroad*, §§ 138, 143 (1928); *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963).)

The Commission finds no merit in the argument that claimant's actions "up to and including May 1, 1944" stripped him of his Polish nationality and simultaneously effected his "naturalization" as a noncitizen national of the United States. An alien does not assume the status of United States nationality until the procedure of naturalization has been fully complied with and an order divesting him of his former nationality and making him a citizen has been signed by a judge of a court of competent jurisdiction. The Nationality Code sets forth the procedures in this respect. If, indeed, claimant lost his Polish nationality on May 1, 1944, it would not follow that he simultaneously acquired United States nationality inasmuch as the existence of stateless persons is fully recognized by the courts of this country. (See *Kennedy v. Mendoza-Martinez*, *supra*.) Regardless of the effect of the oath of office on claimant's Polish nationality, it did not serve to make him a United States national.

As counsel for claimant has said, the word "alien" is not defined in the Nationality Act of 1940, and was later defined in the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163 (1952); 8 U.S.C. § 1101(a) (3) (1958)) merely as "any person not a citizen or national of the United States." We therefore must disagree with the contention that claimant was no longer an alien after May 1, 1944. Since he was not a citizen or national of the United States prior to May 9, 1949, he was an alien until that date. That claimant so regarded himself is evidenced by the fact that in his petition for naturalization, filed on February 16, 1949, he stated that he was then a Polish national. There is no immediate step from the status of "alien" to "national" except in those cases involving territorial changes as previously discussed herein.

In view of the foregoing, the Proposed Decision of April 4, 1963, is hereby affirmed, and the claim is denied.

Dated at Washington, D.C.
September 2, 1964.

Nationality requirements—natural persons.—The compensability of claims filed under the Polish Claims Agreement of 1960 (appearing at page 757) was contingent, at the outset, upon the United States national character of the claims, in accordance with nationality requirements set forth in the Agreement. Paragraph A of the Annex required that all claims be owned continuously from the date of taking of property to the effective date of the Agreement (July 16, 1960), by natural persons or juridical persons qualifying as United States nationals, directly or indirectly, as specified in subparagraphs. The jurisdiction of the Commission with respect to these claims springs from Section 4(a), Title I, of the International Claims Settlement Act of 1949, as amended (appearing at page 706), which authorized the Commission to adjudicate claims of “nationals of the United States” included within the terms of any claims settlement agreement thereafter concluded with any government with which the United States was not at war during World War II, applying “(1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity.” Under Section 2(c) of Title I, the term “nationals of the United States” included “persons who are citizens of the United States” and those “who, though not citizens of the United States, owe permanent allegiance to the United States.” Thus, the Commission resolved questions pertaining to the nationality status of claimants in consonance with the pertinent provisions of both the Polish Claims Agreement and Title I of the 1949 Act, supplemented by applicable principles of international law, justice and equity.

Pursuant to the specific language of paragraph A of the Annex as to the period of time during which claims filed under the Polish Claims Agreement must have been owned by nationals of the United States, the Commission noted in the *Krukowski* decision that a claim could be found compensable only if the property upon which it is based was owned by a United States national or nationals at the time of loss, and the claim was owned by a United States national or nationals continuously thereafter to July 16, 1960, the date of the Agreement. Record evidence established that claimant became a national of the United States by naturalization on May 9, 1949, subsequent to the date of loss found by the Commission. The claim therefore was denied as not compensable under the Polish Claims Agreement, since any interests claimant may have held in the subject property were not owned by a “national of the United States” when the property was “taken” by the Government of Poland.

A number of claims had been denied with the use of such language, where the property or the claim had been owned by non-nationals of the United States on the date of loss or at some time between that date and the date of the Agreement, before the Commission was faced with a claim based upon a loss suffered by a person who had been a United States national from the date of loss through the date of the Agreement, but who died on January 1, 1961 leaving his property, including the claim against Poland, to his three children, only one of whom was a United States national. The Commission held that in view of the requirement of international law of continuous ownership of a claim

from the time it arose until the time of its presentation to the adjudicating body, and the applicability of this principle to all claims filed under Title I of the 1949 Act, continuous ownership by a United States national or nationals was required beyond the date of the Polish Claims Agreement of 1960 and up to the date of filing of the claim. An award was made only for the portion of the claim which was inherited by a United States national. (*Claim of Richard O. Graw, Executor of the Estate of Oscar Meyer, Deceased*, Claim No. PO-7595, Dec. No. PO-8583, 23 FCSC Semiann. Rep. 52 (July-Dec. 1965).)

Noncitizens who owe permanent allegiance to the United States.—An auxiliary issue was involved in *Krukowski* with respect to the status of noncitizen nationals who “owe permanent allegiance to the United States” within the meaning of Section 2(c), Title I, of the 1949 Act. It was contended that the taking of an oath of allegiance to the United States by claimant on May 1, 1944, as an incident to entering civilian employment in the Federal Government, had conferred upon claimant, prior to his formal naturalization, the status of “national of the United States” within the meaning of the Agreement and applicable statutes, as a person who, though not a citizen of the United States, owed permanent allegiance to the United States. In rejecting this contention, the Commission noted that “there is no provision of law under which an alien might become a noncitizen national of the United States by taking an oath of allegiance to the United States, permanent or otherwise.” The status of noncitizen national, “owing permanent allegiance to the United States,” devolved only upon those persons born in “outlying possessions of the United States,” or born elsewhere of parents already possessing that status, who were neither aliens nor United States citizens. Based on statutory provisions regarding acquisition of United States nationality and supporting legislative history and judicial authority, the Commission drew a distinction between permanent and temporary allegiance and concluded that claimant, as an alien, could have become a United States national only by compliance with the legal requirements and procedures stipulated by Congress in the Nationality Act of 1940, and not otherwise. Subsequent to taking the oath of allegiance, claimant met the formal nationality requirements and became a “national of the United States” within the meaning of the Polish Claims Agreement through naturalization on May 9, 1949.

Declaration of intention to become a United States citizen.—Similar reasoning was employed by the Commission to deny a claim where claimant had filed a declaration of intention to become a citizen of the United States, but had not yet become a citizen. Since he was not a citizen of the United States, his claim could be valid only if he owed permanent allegiance to the United States within the meaning of Section 2(c) of Title I. It was argued that a person residing legally in the United States and owing allegiance to no foreign country can be considered as owing permanent allegiance to the United States, and therefore a “national of the United States” as defined in Title I, even though not a citizen of the United States. The Commission found that “permanent residence in the United States or a declaration of intention to become a United States citizen do not bring a person

within the ambit of the phrase 'owe permanent allegiance to the United States.'" It was concluded that claimant was not a "national of the United States," as required for compensation under the Polish Claims Agreement. (*Claim of Fajbus Zakrzewski*, Claim No. PO-1695, Dec. No. PO-3, 14 FCSC Semiann. Rep. 198 (Jan.-June 1961).)

United States nationality by derivation.—In all Polish claims in which the Commission granted awards to claimants, the nationality requirements of the Agreement and Title I were complied with. Each decision resulting in an award to a natural person contained findings by the Commission that claimant, as well as any predecessor-in-interest back to the date of loss, had acquired United States nationality by birth or by naturalization on a certain date, under the usual set of facts. An alien woman might also have derived United States nationality through marriage to a citizen of the United States, until such nationality derivation was abrogated by the "Cable Act" of September 22, 1922. Thus, the nationality requirements were met for a claimant's predecessor-in-interest, when such predecessor became a citizen of the United States by derivation through her husband, who was naturalized on July 11, 1914 subsequent to their marriage. (*Claim of Janina A. Schap, et al.*, Claim No. PO-2161, Dec. No. PO-2370, 20 FCSC Semiann. Rep. 14 (Jan.-June 1964).) In the same claim, another claimant qualified as a derivative national of the United States by reason of his father's naturalization on July 11, 1914.

Nationality on date of loss.—Where a claimant alleged that his property had been confiscated by the Polish Army on September 2, 1939, and that he became a citizen of the United States on September 12, 1955, and no proof was submitted in support of the allegations, the Commission assumed that the facts were as stated, and denied the claim as not being a claim of a "national of the United States" as defined in Annex A to the Polish Claims Agreement of 1960 because the property was not owned by a United States national on the date of loss. (*Claim of Jacob Meisler*, Claim No. PO-4436, Dec. No. PO-286, 16 FCSC Semiann. Rep. 30 (Jan.-June 1962).) Similarly, where a claimant owned stock interests in the Association of Polish Mechanics of America which was nationalized on September 5, 1947, the Commission denied the claim since claimant assertedly did not become a citizen of the United States until December 12, 1954. (*Claim of Adam Omylaniuk*, Claim No. PO-1266, Dec. No. PO-785, 17 FCSC Semiann. Rep. 53 (July-Dec. 1962).)

Continuous ownership by United States nationals.—The operation of the requirement of continuous ownership by a United States national or nationals was well illustrated where claimant became a United States national on June 17, 1955, and her father and mother had been United States nationals since April 5, 1948 and June 21, 1948, respectively. The father died on September 28, 1958 and the mother died on January 16, 1962, claimant inheriting all of their property. For items of property which had been owned by the father or owned jointly by claimant's parents, and which had been taken by the Polish Government in 1949 and 1959, award was made for the full value at time of loss. Ownership of this property had been in United States nationals at all times between the date of loss and the date of filing the claim, even

though claimant had not been a United States national or had not been sole owner of the property on the date of loss. One item of property had been owned jointly by the parents when taken by the Government of Poland on May 25, 1948. The portion of the claim based upon the mother's interest in this property was denied because it was not owned by a United States national on the date of loss. Claimant received an award for the one-half interest which had been owned by her father. The claimant, her mother, and her father each owned a one-third interest in one other item of property on September 3, 1949 when it was taken. Since claimant was not a United States national on that date, the portion of the claim based upon the one-third interest then owned by her was denied. Award was made to her for the two-thirds interest which had been owned by her parents and therefore was owned by United States nationals from date of loss to date of filing. (*Claim of Jadwiga Pascal*, Claim No. PO-7056, Dec. No. PO-9118, 23 FCSC Semiann. Rep. 67 (July-Dec. 1965).)

An interesting adjunct to the nationality requirements allowed the Commission to dispose of obviously ineligible noncitizen claims without the necessity of development and findings with respect to the precise dates on which the claims arose. The factual situation presented was one where a claimant, who was the owner of property at the time of its loss, became a national of the United States subsequent to July 16, 1960, the effective date of the Agreement, and where the date of loss remained in doubt. Article 1 of the Polish Claims Agreement of 1960 provided for the settlement and discharge of claims of "nationals of the United States" based upon the nationalization and other taking of property by the Government of Poland "which occurred on or before the entry into force of this Agreement," i.e., on or before July 16, 1960. Therefore, under the aforementioned factual proposition, if claimant's property was taken on or before July 16, 1960, such loss could not give rise to a compensable claim because the claimant was not then a United States national and the claim could not meet the requirements of ownership by a United States national on the date of loss. If the loss of property occurred subsequent to July 16, 1960, the claim was not valid because it arose after the Polish Claims Agreement became effective. Consequently, whether the loss of property occurred before or after the signing of the Agreement, the claim was not compensable within the meaning of the Agreement. (*Claim of Wolf Boksenbaum*, Claim No. PO-2414, Dec. No. PO-299, 16 FCSC Semiann. Rep. 31 (Jan.-June 1962).)

Losses through corporations organized in Germany.—Although paragraph A of the Annex to the Polish Claims Agreement of 1960 provides a far lengthier and more detailed exposition of the varied factual situations of continuous ownership under which a claim would constitute a claim of a national of the United States, the questions and their resolutions concerning nationality and continuous ownership in the Polish claims program were similar to those in earlier claims programs, both as to natural and juridical persons, except where a claimant's interest in the property taken was owned indirectly through a juridical person organized under the laws of Germany.

Where an award in the principal amount of \$5,922,257.00 was

made to an American corporation for the nationalization by Poland of property in which it had indirect ownership interests through other juridical persons, a portion of the claim based upon a taking of assets of Deutsche Vacuum Oel, A.G., a wholly-owned subsidiary, was denied. This subsidiary, a German corporation based in Hamburg, had certain assets in that portion of Germany which came under Polish jurisdiction after World War II. Such assets, assertedly worth \$187,395.00, were taken by the Polish Government under the Decree of March 8, 1946. Finding that in 1946 the overwhelming majority of the German corporation's assets were still in Germany and beyond the reach of Polish nationalization, the Commission denied this portion of the claim in view of the provision of subparagraph (e) of paragraph A of the Annex that in the case of property owned through a juridical person organized under the laws of Germany, the claim of a person or corporation otherwise eligible is compensable only if a major part of the property of the German corporation was taken by Poland. (*Claim of Socony Mobil Oil Company, Inc.*, Claim No. PO-2650, Dec. No. PO-1769, 19 FCSC Semiann. Rep. 30 (July-Dec. 1963).)

Another corporate claimant, which received an award in the principal amount of \$82.47 for the loss of a bank account in Poland, received no award for an asserted loss of \$873,066.00 representing its share of the nationalized assets of a German corporation in which it held 97% of the outstanding stock. The lost assets amounted to only 3.78% of the German corporation's total assets at the time. A major part of the German corporation's assets not having been taken by the Government of Poland, this portion of the claim was denied. (*Claim of F. W. Woolworth Co.*, Claim No. PO-6068, Dec. No. PO-8172, 23 FCSC Semiann. Rep. 38 (July-Dec. 1965).)

A claimant which had received an award for the loss of certain accounting machines and appliances which it had owned directly, objected to that part of the Proposed Decision which denied the portion of the claim based upon machines which it owned indirectly through a German subsidiary, and which did not constitute a major part of the subsidiary's assets. Claimant urged that the words "major part" should be construed to mean "substantial or significant part"; but the Commission, considering the negotiating history of the Agreement and pertinent court decisions, held that the words "major part" must be construed in their ordinary meaning as the greater of two parts. Claimant further contended that the claim should be found compensable under subparagraph (g) of paragraph A of the Annex, which includes property indirectly owned "through interests which collectively are substantial in amount, through any number of juridical persons organized under the laws of any country, a substantial part of whose property has been taken by Poland." To this, the Commission held that subparagraph (g) is applicable only where subparagraphs (e) and (f) are not; i.e., that (e) and (f) govern property owned through German corporations, and (g) applies to corporations organized under the laws of countries other than Germany. The Proposed Decision was affirmed. (*Claim of IBM World Trade Corporation*, Claim No. PO-10047, Dec. No. PO-9208.)

Limitation upon awards to certain reorganized corporations.—

A further restriction of the Annex, which found application in only one claim under the Polish Claims Agreement of 1960, was contained in paragraph B, as follows:

Juridical persons organized under the laws of the United States or of a constituent State or other political entity thereof which have been reorganized through judicial proceedings after their property or rights and interests in and with respect to property were nationalized or taken by Poland shall participate in the sum to be paid by the Government of Poland only to the extent that the outstanding capital stock or proprietary interest in such juridical persons was owned, at the time of such nationalization or other taking, by natural persons who were nationals of the United States, directly, or indirectly through interests in one or more juridical persons organized under the laws of the United States or of a constituent State or other political entity thereof.

In a claim by an American corporation which qualified as a claim of a national of the United States under paragraph A of the Annex, an award was granted in the principal amount of \$16,421,825.65 or 50.32% of the total amount of claimant's loss (\$32,634,788.66), the Commission having found that claimant corporation had been reorganized through judicial proceedings after the nationalization of its property, and that the interest in claimant corporation owned by natural persons who were nationals of the United States at the time of nationalization of the property was 50.32%. In calculating this percentage of ownership, the Commission considered all outstanding common stock and preferred stock, but not bonds, although claimant urged their inclusion as a proprietary interest because the corporation was insolvent. The Commission reasoned that under the wording of the paragraph, the terms "capital stock" and "proprietary interest" were mutually exclusive, and any property interest other than capital stock could be considered only if there were no capital stock outstanding. (*Claim of Silesian-American Corporation*, Claim No. PO-4174, Dec. No. PO-8336, 23 FCSC Semiann. Rep. 49 (July-Dec. 1965).)

In the Matter of the Claim of

Claim No. PO-1246
Decision No. PO-1634

HERBERT BROWER

Against the Government of Poland

Transfer of property under duress by German Government during World War II was invalid and did not divest owner of title. Real property considered as abandoned under Article 34 of Decree of March 8, 1946, presumed taken by Poland on January 1, 1956, ten years after termination of World War II, in absence of evidence to the contrary.

PROPOSED DECISION

This claim, for \$93,500, is based upon the asserted ownership and loss of real property located in the city of Wroclaw (formerly Breslau) and the loss of a business enterprise, furniture, art objects, jewelry and a motor car. Claimant, HERBERT BROWER, has been a national of the United States since his naturalization on May 11, 1943.

Under the Polish Claims Agreement of 1960, claims by nationals of the United States for "(a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property . . ." are settled and discharged. (*Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States*, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960), Article II.)

The Agreement further defines "claims of nationals of the United States" as including:

rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropriation or other taking to . . . [July 16, 1960], have been continuously owned . . . (a) directly by natural persons who were nationals of the United States (*Polish Claims Agreement of 1960, supra, at Annex Paragraph A*. See also 14 *FCSC Semiann. Rep.* 186 (Jan.-June 1961).)

On the basis of the evidence submitted by the claimant and of the Commission's independent investigation conducted in Poland, the Commission finds that the business enterprise and other personal property, as well as the buildings located at 25 Kollataja Street (Neuse Taschenstrasse) and 26 Stawowa Street (Teichstrasse) in Wroclaw were either totally destroyed as a result of military action during World War II in the area of Wroclaw or otherwise disposed of by actions of the German Government.

The Polish Claims Agreement of 1960 provides for the payment of compensation for property which was nationalized, appropriated or otherwise taken by the Government of Poland. It does not settle or discharge claims based upon damage to or destruction of property during World War II, or the taking of property by forces occupying Poland during the war. (See *Claim of Dominick W. Przybylinski*, Claim No. PO-1358, Dec. No. PO-669.) Accordingly, the portion of the claim based upon the business enterprise, the personal property, and the improvements on the land is denied.

With regard to the properties located at 25 Kollataja Street and 26 Stawowa Street in Wroclaw (a city in that area of Poland which was part of Germany (Breslau) prior to the end of World War II), however, the evidence of record before the Commission

indicates that prior to World War II claimant's father, Hyman Brower, was the record owner of these properties; that in 1940, the city of Wroclaw then being part of Germany, the properties were confiscated by the Nazi Government of Germany pursuant to anti-Jewish laws, and transferred to third persons. The record further discloses that such confiscation and transfer by the Nazi Government of Germany was executed for reasons of racial and political discrimination under the then existing anti-Jewish laws of Germany.

Since the Potsdam conference in the summer of 1945, the city of Wroclaw has been under the administration of the Polish Government and has been considered by that government as part of Poland. (See Halecki, *East Central Europe under the Communists: Poland* 14 (1957).)

In 1946, pursuant to Article 34 of the Decree of March 8, 1946, (*Dz. U. 1946, No. 13, it. 87*), the Government of Poland provided for the taking of real property considered as abandoned, on the expiration of ten years from the end of the year in which World War II terminated (January 1, 1956).

Claimant contends that the prior Nazi decree operating to divest the former record owner of title is in fact invalid, that the property descended to claimant and his sister, and that the property was therefore actually taken pursuant to the subsequent Polish decree on January 1, 1956.

The issue thus presented is whether the Commission shall give effect to the confiscation and transfer of property under duress by the Nazi Government of Germany under the anti-Semitic laws of that time. If such transfer were regarded by the Commission as valid, or if the Commission were precluded from reviewing the decree, the legal effect would be to divest the former owner of title and render his claim (or that of his successors in interest) before the Foreign Claims Settlement Commission not compensable under the Polish Claims Agreement of 1960.

The International Claims Settlement Act of 1949, as amended, specifically provides that "In the decision of claims under this title the Commission shall apply the following in the following order: (1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity." (International Claims Settlement Act of 1949, as amended, 64 Stat. 12 (1950), 22 U.S.C. § 1623(a) (1958).) Since the Polish Claims Agreement of 1960 is silent as to the issue at hand, the Commission is bound to apply the "applicable principles of international law, justice, and equity."

A discussion of these principles may begin with the case of

Bernstein v. Van Heyghen Freres Societe Anonyme, 163 F. 2d 246 (2d Cir. 1947), *cert. denied*, 332 U.S. 772 (1947), decided by the Circuit Court of Appeals for the Second Circuit in 1947. In the *Bernstein* case, the plaintiff, Bernstein, a German national of Jewish faith, was a victim of Nazi governmental persecution. He was taken forcibly into custody by "Nazi officials in Germany," and while imprisoned, "by means of duress . . ." was compelled to execute documents which purported to transfer all the shares of the "Arnold Bernstein Line" to a German "trustee." Defendant, a Belgian corporation, "acquired" the vessel "Gandia" from the Nazi "trustee." Subsequently, the vessel was sunk and insurance amounting to £100,000 had been paid for the loss. Plaintiff brought action for damages for conversion of the vessel, for money had and received for its earnings, and for the proceeds of the insurance paid for its loss at sea. The action, originally brought in the state court, was removed to the U.S. District Court for the Southern District of New York. From an order quashing the writ of attachment of the insurance fund being held for defendant's account, and dismissing the complaint, plaintiff appealed to the Circuit Court of Appeals.

Applying the law of New York State, the Circuit Court of Appeals affirmed the holding of the district court in a two to one decision. In so doing, that court gave expression to the classic "act of State" doctrine as follows:

We have repeatedly declared, for over a period of at least thirty years that *a court of the forum will not undertake to pass upon the validity under the municipal law of another state of the acts of officials of that state, purporting to act as such.* (*Bernstein v. Van Heyghen Freres Societe Anonyme*, 163 F. 2d 246, 249 (2d Cir. 1947) (emphasis added).)

By the application of that doctrine, judicial review of the legality of the acts of the agents of the defunct German government was thereby precluded.

This holding was widely criticized (see, e.g., House, *The Law Gone Awry: Bernstein v. Van Heyghen Freres*, 37 Calif. L. Rev. 38 (1949), and discussion in Re, "Confiscation by the Defunct Nazi Regime" in *Foreign Confiscations in Anglo-American Law* 116 (1951)). Nevertheless, the Court had made its position clear:

The difficulty lies, not in any defect in the law . . . as to conflict of laws, but because of that other doctrine which we have mentioned; i.e., that *no court will exercise its jurisdiction to adjudicate the validity of the official acts of another state.* (*Bernstein v. Van Heyghen Freres Societe Anonyme*, 163 F. 2d 246, 249 (2d Cir. 1947) (emphasis added).)

That decision, adhering strictly to the "act of state" doctrine, forcefully demonstrated the injustice that may result from the application of this doctrine in spite of an overwhelmingly clear public policy demanding its non-application to the acts of the particular government.

The case, however, contained an important element. Although the court accepted the principle of non-review, it was of the opinion that the principle would be inapplicable *if there had been a determination by the Executive to that effect.* (*Bernstein v. Van Heyghen Freres Societe Anonyme*, 163 F. 2d 246, 249 (2d Cir. 1947).) That is, the court regarded the principle of non-review as a judicial limitation from which the court might have been freed by a declaration or determination by the Executive that the principle should not apply in a given situation.

However, after a consideration of the Executive policy as gleaned from the materials then available, the court concluded that there was no positive determination by the Executive removing the restraint of non-review. Consequently, the order of the district court was affirmed.

Subsequently, the plaintiff Bernstein, in another action, *Bernstein v. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*, 76 F. Supp. 335 (S.D.N.Y. 1948) *aff'd in part, modified in part*, 173 F. 2d 71 (2d Cir. 1949), calculated to recover other assets of which he had been despoiled in a similar manner, amended his complaint to omit certain details. This second *Bernstein* case was decided on different grounds and did not discuss the principle of judicial non-review. A subsequent appeal, however, brought the same issue once again before the United States Court of Appeals for the Second Circuit, *Bernstein v. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*, 210 F. 2d 375 (2d Cir. 1954).

This time, however, that Court noted that a "supervening expression of Executive policy" now existed. The court cited a State Department Press Release (No. 296 of April 27, 1949) entitled "Jurisdiction of United States Courts re Suits for Identifiable Property Involved in Nazi Forced Transfers." The court went on to quote the substance of the release as follows:

As a matter of general interest, the Department publishes herewith a copy of a letter of April 13, 1949 from Jack B. Tate, Acting Legal Advisor, Department of State, to the Attorneys for the plaintiff in Civil Action No. 31-555 in the United States District Court for the Southern District of New York.

The letter repeats this Government's opposition to forcible acts of dispossession of a discriminatory and confiscatory nature practiced by the Germans on the

countries or peoples subject to their controls; states that it is this Government's policy to undo the forced transfers and restitute identifiable property to the victims of Nazi persecution wrongfully deprived of such property; and sets forth that the policy of the Executive, with respect to claims asserted in the United States for restitution of such property, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials. (*Bernstein v. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*, 210 F. 2d 375, 376 (2d Cir. 1954) (emphasis added).)

The court further quoted significant excerpts from that letter:

1. This Government has consistently opposed the forcible acts of dispossession of a discriminatory and confiscatory nature practiced by the Germans on the countries or peoples subject to their controls

3. The policy of the Executive, with respect to claims asserted in the United States for the restitution of identifiable property (or compensation in lieu thereof) lost through force, coercion, or duress as a result of Nazi persecution in Germany, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials. (*Ibid.*)

"In view of this supervening expression of Executive Policy," concluded the court, "we amend our mandate in this case by striking out all restraints based on the inability of the court to pass on acts of officials in Germany during the period in question. See 173 F. 2d at pages 75-76." (*Ibid.*)

In spite of the ultimate private settlement of the litigation, the *Bernstein* cases nevertheless represent the most significant development in the evolution of the principle that the courts of one country will not sit in judgment on the acts of government of another. (*Bernstein v. Van Heyghen Freres Societe Anonyme*, 163 F. 2d 246 (2d Cir. 1947), *cert. denied*, 332 U. S. 772, (1947); *Bernstein v. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*, 76 F. Supp. 335 (S.D.N.Y. 1948), *aff'd in part, modified in part*, 173 F. 2d 71 (2d Cir. 1949); *Bernstein v. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*, 117 F. Supp. 898 (S.D.N.Y. 1953); *Bernstein v. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*, 210 F. 2d 375 (2d Cir. 1954).)

The point of these cases is to the effect that the principle normally does apply; however, the presumption of its applicability may be rebutted by a determination by the Executive to that effect. (See materials cited in *Re, Judicial Development in Sovereign Immunity and Foreign Confiscations*, 1 *New York Law Forum*, 160, 197 (1955).) This view, as developed in the

Bernstein cases, has since been enunciated in several other cases concerning confiscations and related areas, see *Banco Nacional de Cuba v. Sabbatino*, 307 F. 2d 845 (2d Cir. 1962), *cert. granted*, 372 U.S. 905 (1963); *Rodriguez v. Pan American Life Ins. Co.*, 311 F. 2d 429 (5th Cir. 1962); *Compania Ron Bacardi, S.A. v. Bank of Nova Scotia*, 193 F. Supp. 814 (S.D.N.Y. 1961); *Ioannou v. New York*, 83 S. Ct. 6 (1962). But see *Pons v. Republic of Cuba*, 294 F. 2d 925 (D.C. Cir. 1961), *cert. denied*, 368 U.S. 960 (1962). Cf. *Latvian State Cargo & Pass. S. S. Line v. McGrath*, 188 F. 2d 1000 (D.C. Cir. 1951); *Wyman v. United States*, 166 F. Supp. 766 (U.S. Ct. Cl. 1958); *Rozenfeld v. Commissioner*, 181 F. 2d 388 (2d Cir. 1950); *Mayer v. United States*, 111 F. Supp. 251 (126 Ct. Cl. 1, 1953).

In *Banco Nacional de Cuba v. Sabbatino*, for instance, the Court of Appeals for the Second Circuit summed up the present state of the law concerning the recognition of Nazi confiscatory decrees as follows:

However, when the executive branch of our Government announces that it does not oppose inquiry by American courts into the legality of foreign acts, an exception to the judicial abnegation required by the act of state doctrine has arisen and has been recognized both in this circuit and elsewhere. In *Bernstein v. N. V. Nederlandsche Amerikaansche Stoomvaart-Maarschappij*, 210 F. 2d 375 (2d Cir. 1954) (*per curiam*), when we received word from the State Department that it was State Department policy to permit American courts to pass on the validity of acts done by Nazi officials, our court rescinded its earlier mandate by which, based upon the act of state doctrine, we had prevented the district court from questioning the validity of the acts of the German Nazi government. See 173 F. 2d 71 (2d Cir. 1949). See also *Bernstein v. Van Heyghen Freres S. A.*, 163 F. 2d 246, 252 (2d Cir.), *cert. denied*, 332 U.S. 772, 68 S. Ct. 88, 92 L. Ed. 357 (1947); Restatement, Foreign Relations Law of the United States § 44 (Proposed Official Draft, 1962); *Kane v. National Institute of Agrarian Reform* (Fla. Cir. Ct.), 18 Fla. Supp. 116 [No. 61 L 730, June 8, 1961]; Association of the Bar of the City of New York, Committee on International Law, Report, A Reconsideration of the Act of State Doctrine in United States Courts 13 (May 1959) . . . (*Banco Nacional de Cuba v. Sabbatino*, 307 F. 2d 845, 857-58 (2d Cir. 1962), *cert. granted*, 372 U.S. 905 (1963). See also *Rodriguez v. Pan American Life Ins. Co.*, 311 F. 2d 429, 435 (5th Cir. 1962).)

In light of the foregoing, the Foreign Claims Settlement Commission will follow the clear, and unequivocal expression of Executive policy with regard to Nazi confiscations. (See Letter of

April 13, 1949 from Jack B. Tate, Acting Legal Advisor, Department of State, to the Attorneys for plaintiff in Civil Action No. 31-555, United States District Court for the Southern District of New York; Department of State Press Release No. 296 (April 27, 1949), cited in *Bernstein v. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*, 210 F. 2d 375, 376 (2d Cir. 1954).) The Commission further notes that the United States Court of Claims, in a related case, has specifically said that "This executive policy . . . relates to undoing forced transfers of property and restoring identifiable property which has been transferred under such Nazi decrees." (*Wyman v. United States*, 166 F. Supp. 766, 770 (U.S. Ct. Cl. 1958). See also *Mayer v. United States*, 111 F. Supp. 251 (126 Ct. Cl. 1, 1953); *Rozenfeld v. Commissioner*, 181 F. 2d 388 (2d Cir. 1950).)

Thus relieved of the restraint of the so-called "act of state" doctrine, the Commission may proceed to give effect to the governing principles of substantive international law. In so doing, the Commission will apply the international standard of justice to determine if the act of the foreign government constitutes a denial of justice as that standard is understood in international law. (See V Hackworth, *International Law* 522, 537-538 (1943); Comment, *Harvard Research in International Law, The Law of Responsibility of States for Damage Done in Their Territory to the Person and Property of Foreigners*, 23 *Am. J. Int'l L.* 154 (1929); Lissitzyn, *The Meaning of the Term Denial of Justice in International Law*, 30 *Am. J. Int'l L.* 632 (1936).)

The record before the Commission in the instant claim indicates that prior to World War II claimant's father, Hyman Brower, was the record owner of the properties located at 25 Kollataja Street and 26 Stawowa Street in Wroclaw (then Breslau); that in 1940 the properties were confiscated by the Nazi Government of Germany pursuant to anti-Jewish laws, and transferred to third persons. The record further reveals that claimant's father died in 1942 in a concentration camp; and that claimant and his sister, Alice Lowenstein (not a claimant before this Commission), but for the Nazi decree, would have inherited Hyman Brower's property in equal shares.

This Commission has consistently regarded as settled principles of international law, justice, and equity, that private property may not be taken without the payment of prompt, adequate, and effective compensation, and that no person can be deprived of his property solely on the ground of his nationality, religion, race, or creed. (Cf. *Czechoslovak Confiscatory Decree Case* (American Zone), Court of Appeals of Nuremberg, Germany, 1949, 1949 *Ann. Dig.* 19 (No. 10); *Confiscation of Property of*

Sudeten Germans Case, Germany, Amtsgericht of Dingolfing (1948), 1948 Ann. Dig. 24 (No. 12).) The Commission therefore concurs in the observations set forth in *Anglo-Iranian Oil Co., Ltd. v. S.U.P.O.R. Co.*, Italy, Civil Ct. of Rome (1954), 1955 Int'l L. Rep. 23, 40:

. . . discriminatory laws, enacted out of hatred, against aliens or against persons of any particular race or category or against persons belonging to specific social or political groups cannot be applied . . . because they run counter to the initially accepted principle of the equality of individuals before the law.

Such principles, developed by international doctrine, are generally accepted by the jurisprudence of the various countries.

The Commission, applying the principles of international law, justice, and equity to the facts of the present claim, therefore finds that the acts of the defunct Nazi regime with regard to this property constituted a denial of justice and a violation of the international standard of justice as that standard is understood in international law. Consequently, the Commission holds that the Nazi decree in question was invalid and ineffective to transfer or divest title from claimant's father; and that after World War II, claimant in fact owned a one-half interest in the property now consisting of two building lots in Wroclaw.

The Commission's independent investigation of the property in Poland reveals that this property was within the purview of Article 34 of the Decree of March 8, 1946 (*Dz. U. 1946, No. 13, it. 87*). That decree provided for the taking of real property considered as abandoned, on the expiration of ten years from the end of the year in which World War II terminated, January 1, 1956. In the absence of evidence to the contrary, the Commission therefore finds that claimant's property was taken on that date, January 1, 1956. (See *Claim of David Sturm*, Claim No. PO-4375, Dec. No. PO-781.)

The Commission's investigation in this case further reveals that at the time of taking, claimant's lot at 25 Kollataja Street, measuring 1029 square meters, had a value of \$2,000.00; and that the value of his lot at 26 Stawowa Street, measuring 730 square meters, was \$1,500.00, or a total of \$3,500.00.

Accordingly, the Commission finds that the claimant, pursuant to the terms of the Polish Claims Agreement of 1960, is entitled to an award for his one-half interest in the property, in the amount of \$1,750.00.

In granting awards on claims under the Polish Claims Agreement of 1960, the Commission has further held that interest shall be allowed at the rate of 6% per annum from the date of

loss to July 16, 1960, the effective date of the Agreement. (See *Claim of John Hedio Proach*, Claim No. PO-3197, Dec. No. PO-652.) Accordingly, the Commission further orders the amount of the award to be increased to that extent.

AWARD

An award is hereby made to HERBERT BROWER in the principal amount of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) with interest thereon at the rate of 6% per annum from January 1, 1956 to July 16, 1960, the date of the Polish Claims Agreement, in the amount of Four Hundred Seventy-six Dollars and Eighty-eight Cents (\$476.88).

Dated at Washington, D.C.
September 25, 1963.

Ownership in general.—Claimant's ownership of "property and of rights and interests in and with respect to property" was one of the conditions for a compensable claim under the Polish Claims Agreement of 1960 (Article 2(a) of the Agreement). Accordingly, where official Polish documentation indicated that claimants' asserted predecessors in interest owned real property in the area of Goleszow but sold it to third parties in 1929, 1930, and 1931, the Commission denied the claim for claimants' failure to establish their ownership of rights and interests in property which was nationalized, appropriated, or otherwise taken by the Government of Poland. (*Claim of Max Storch, et al.*, Claim No. PO-10529, Dec. No. PO-2490.) Also, where the evidence indicated that title to the property claimed was in the name of persons other than claimant or her asserted predecessors in interest, the claim was denied for the same reason. (*Claim of Sabina Brokman*, Claim No. PO-5308, Dec. No. PO-4788.) It was necessary for a claimant to establish not only the fact that he had an ownership interest in property, but the extent of that interest and the value thereof. Where affidavits submitted by a claimant indicated that claimant's late father was a "principal owner" of a firm, but there was no evidence of record indicating the exact share owned, and no attempt was made by claimant to establish the outstanding obligations of the firm, the Commission held that any finding concerning claimant's ownership interest in the firm and its value would be mere speculation; and for that reason denied that portion of the claim. (*Claim of Oskar Seidlin*, Claim No. PO-5454, Dec. No. PO-9317.)

Executory agreements.—Claimant's ownership was the prin-

principal issue in a claim based upon an interest in industrial and real properties and loss of management fees. Claimant, the Colorado Fuel & Iron Corporation, asserted that it acquired a 24% capital interest in the industrial property known as the "Prince Pless Estate" on the basis of a letter dated October 29, 1945, in which Alexander Pszczynski, Count of Hochberg, made an offer to the claimant under which it would take over the future management of the "Prince Pless Estate" in Poland, and establish in the United States a corporation which would include all the business interests of the Pless Estate, and in which claimant would have a 24% minority interest. Additionally, claimant would receive 12½% of the gross income of the industrial enterprises. The offer was accepted by the claimant on December 23, 1945. The Commission held that the Agreement of December 23, 1945 was in the nature of an executory contract which would have been executed only if claimant had, in fact, taken over the management of the Polish enterprises. With respect to the proprietary interests, claimant would have acquired title to part of the holdings only after the establishment of an American corporation and after distribution of the shares of stock as provided for in the Agreement. None of this had been done. The Commission concluded that claimant had failed to prove (1) that it acquired any proprietary interests in the Polish holdings or (2) that it earned any management fees which were owed by enterprises nationalized by the Government of Poland, and denied the claim. (*Claim of Colorado Fuel & Iron Corporation*, Claim No. PO-9918, Dec. No. PO-5609, 22 FCSC Semiann. Rep. 27 (Jan.-June 1965).)

Ownership of real property—Law of the situs.—The rule that ownership of real property is governed by the laws of the place where the real property was situated (*lex loci rei sitae*) was adhered to in claims filed under the Polish Claims Agreement of 1960, and called for the application of German as well as Polish law.

The late Erica von Hacke, who died in the United States in June 1951 as an alien, owned a castle, other buildings, agricultural land, and personal property in Warta Boleslawiecka (formerly Altwarthau), Poland. Claimants submitted evidence tending to show that before July 1941 the late Erica von Hacke executed a notarial act intending to transfer title to the castle, farm buildings, park, quarry, forest, and one-half of the farmland to the claimants. It was stated that one copy of such document was filed with the *Katasteramt* in Bunzlau, and a second copy was mailed to the claimants in the United States, but admittedly never received by claimants who did not know of the intended conveyance until June 1945. Since Warta Boleslawiecka is situated in an area which was a part of Germany in 1941, the validity of the alleged conveyance was governed by the German law then in force. Under Section 873 of the German Civil Code, to convey ownership of real property, an agreement by the parties concerning the change of title and recordation of such change in the land register is required. Section 925 of the German Civil Code further provides that the agreement must be declared orally at the Land Register Office (*Grundbuchamt*)

by both parties in each other's presence. A properly authorized agent may act for a party to the contract. A notary public may accept the declaration on behalf of the *Grundbuchamt*, if so authorized by the local law. German law further provided that the German Government's consent is needed for the validity of an agreement to convey agricultural land or forest of 2 hectares or more (*Grundstücksverkehrsbekanntmachung* of January 26, 1937; *Reichsgesetzblatt* 35). The Commission held that, viewing the record in its most favorable light, no transfer of ownership in the property could have been effected by the above-described action in July 1941, of which the purported transferees were not even aware until 1945. There was evidence indicating that a document was drawn for and signed by the late Erica von Hacke in 1941 and some attempt was made to record it; but no basis for a finding by the Commission that as a matter of law title to the property was transferred from the donor to the claimants. Accordingly, the claim was denied. (*Claim of Estate of Abraham G. H. Reimold, Deceased, et al.*, Claim No. PO-2289, Dec. No. PO-8934.)

Another aspect of German law was raised by a claimant who alleged that certain farmland with improvements, livestock and machinery constituted an entailed estate, and that his father, who never acquired United States nationality and who died on November 12, 1959, was a life tenant thereof. The area where the property was situated was formerly a part of Germany, and since the termination of World War II has been under the administration of the Government of Poland. Entailed estates were abolished by Article 155(II)2 of the German Constitution of Weimar, dated November 8, 1919. The actual dissolution was carried out by German Laws of June 26 and August 24, 1935 (*Reichsgesetzblatt* 785 and 1103, respectively). A third statute, the German Law of July 6, 1938 (*Reichsgesetzblatt* 825), concerning the abolishment of entailed estates and related matters, provided in Section 1 that still existing entailed estates would become the property of the life tenant in fee simple absolute as of January 1, 1939. The Commission held that the property involved in the claim became the free and unrestricted property of the last life tenant, claimant's father, on January 1, 1939, if not at an earlier date; and whatever rights the claimant had pursuant to the laws governing entailed estates, if any, were terminated on that date. Finding that the property was taken by the Government of Poland on January 19, 1945, when it was not owned by a national of the United States, the Commission denied the claim. (*Claim of Hans C. Scherr-Thoss*, Claim No. PO-5584, Dec. No. PO-8634, 23 FCSC Semiann. Rep. 56 (July-Dec. 1965).)

The Polish law which governed the *situs* of the property was relied upon by the Commission in finding that claimants owned a life estate and remainder interest in the subject property. (*Claim of Dina Raskin, et al.*, Claim No. PO-10483, Dec. No. PO-5433.)

Adverse possession.—The Polish law on adverse possession is reflected in a claim in which claimant's parents owned a farm in Dabrowa, Poland. Prior to 1914 the parents and children immigrated to the United States, leasing a part of the farm to one

Chadzynski and leaving the rest of the farm with claimant's aunt. About 1918 the term of Chadzynski's lease expired and the entire farm was taken over by the aunt who remained in possession for over 30 years, cultivated the land, paid taxes on it and in other respects overtly manifested the rights of ownership. In 1956 a Polish County Court, on petition by claimant to remove the aunt's heirs from the property, declared that the aunt had acquired title to the property by adverse possession pursuant to Article 2262 of the Polish Civil Code, and that prior to her death she willed the property to her granddaughter, who is the present owner. The decision was upheld by the Appellate Court in Warsaw. On November 30, 1956 the Supreme Court of Poland found no basis for review of the matter. In view of the foregoing, the Commission held that claimant had failed to prove her ownership of rights and interests in property which was nationalized, appropriated or otherwise taken by the Government of Poland, and denied the claim. (*Claim of Mary Donderewicz*, Claim No. PO-6232, Dec. No. PO-8641, 23 FCSC Semiann. Rep. 54 (July-Dec. 1965).)

Unrecorded gift of realty.—A claimant's non-record ownership of real property was recognized by the Commission where the empty legal title was still recorded in the name of the former owner. Juliana Albrecht, a nonnational of the United States, had record title to certain real property in Warsaw, Poland, during the period from 1938 to 1962. However, since in 1954, as a part of a property settlement in divorce proceedings, she executed a deed of gift in the State of Michigan transferring the property to claimants, the Commission held that on January 1, 1960, when the property was taken by the Government of Poland, the claimants were the owners of the property despite the fact that title was still recorded in Juliana Albrecht. (*Claim of Walter Albrecht, et al.*, Claim No. PO-7777, Dec. No. PO-1635, 19 FCSC Semiann. Rep. 29 (July-Dec. 1963).)

Ownership in spite of a forced transfer.—The *Brower* decision illustrates a frequent holding of the Commission to the effect that the transfer of property pursuant to discriminatory measures in effect during World War II was invalid and ineffective to divest the owner of title. The Commission concluded that the acts of the Government of Germany with regard to the subject property constituted a denial of justice and a violation of the international standard of justice as that standard is understood in international law.

Not all sales made during World War II were necessarily invalid. Where the evidence established that claimant's father and asserted predecessor in interest had acquired title to property in 1927 but sold it on April 25, 1944, and that the sale was not due to coercion or duress or for inadequate consideration, the Commission held that such property was not owned by the claimant after World War II when it was nationalized by the Government of Poland. (*Claim of Jan Kiepura*, Claim No. PO-1998, Dec. No. PO-6037.)

Neither the loss of ownership under duress nor the acquisition of property through duress was recognized by the Commission. One claimant stated that she had purchased property

in Borowa and Padew, Poland, in 1941 and 1942 from "the district occupying authorities in Mielec." The Commission took notice that in 1941 and 1942 the German occupation authorities were the custodians of property in Poland obtained from the local inhabitants (mostly of Jewish lineage) by confiscation. Section C of the Annex to the Polish Claims Agreement of 1960 provided as follows:

Claims based in whole or in part on property acquired after the application of discriminatory German measures depriving or restricting rights of owners of such property shall participate in the sum to be paid by the Government of Poland only for the parts of such claims which are not based upon property acquired under such circumstances.

The Commission, assuming that record ownership was in the claimant's name, concluded that claimant was not entitled to an award under the Polish Claims Agreement of 1960 for the subsequent loss of the property. (*Claim of Wanda Mary Burzawa*, Claim No. PO-3308, Dec. No. PO-5689, 21 FCSC Semiann. Rep. 36 (July-Dec. 1964).)

Improvements to realty at no expense to owner—unjust enrichment.—During and after World War II many real properties in Europe were improved by others than the rightful owners. Occupation authorities built or altered buildings for dwellings and for storage space. Third parties entered abandoned real property and put up structures or repaired existing but damaged premises. Finally, after World War II the Government of Poland in the course of rebuilding its damaged cities made repairs to or erected buildings upon real property, title to which was still in the names of private owners. The subsequent taking of such property represented no loss to the owner with respect to the value of improvements made by others, in which he had no equity. To award claimant the value of the improvements would constitute an unjust enrichment. Thus, where claimant sought compensation for the nationalization of land and ten houses which had been constructed thereon by German occupation authorities, the portion of the claim based upon the houses was denied for the reason that such improvements did not become an increment to the property which would accrue to the benefit of its owners. (*Claim of Mimi Asch, et al.*, Claim Nos. PO-8652, PO-8659, PO-8663, and PO-8675, Dec. No. PO-6787.) The same conclusion was reached where a private citizen entered upon claimant's land and constructed a brick house, and the portion of the claim based upon the new improvements was denied. (*Claim of Rose Sternlicht*, Claim No. PO-7531, Dec. No. PO-5878.)

Ownership of personal property.—In the course of administering the claims program under the Polish Claims Agreement of 1960, the Commission consistently held that no ownership interests is retained in bearer instruments if possession of the instrument is lost by claimant under circumstances not negating the possibility of their possession by other persons. (*Claim of Estate of Benjamin F. Haas, Deceased*, Claim No. PO-7156, Dec. No. PO-7873, citing the decisions issued on the *Claim of Estate of Isidore Fritz Wurzel, Deceased*, Claim No. PO-8202, Dec. No.

PO-3515, and the *Claim of Ernest G. Rathenau*, Claim No. PO-4658, Dec. No. PO-4339.)

Lost, stolen or destroyed shares of stock.—The Commission stated that the strong possibility of conversion of lost or stolen shares of stock by persons in a position to accomplish this, renders unwarranted a finding by the Commission that the Government of Poland is responsible, under the Agreement, for such losses as were sustained in connection therewith. On the other hand, where evidence in support of a claim clearly establishes that shares of stock were destroyed or where such shares were annulled specifically by share numbers, or validated by share numbers (rather than by a mere statement of amount), the Commission has taken the position that conversion of the shares was unlikely, with the result that Poland may be held responsible under the Agreement for loss in connection therewith. (*Claim of Leopold T. Wellisz, et al.*, Claim No. PO-10202, Dec. No. PO-9324.)

Evidence in one claim established that claimant had deposited stock certificates in the safe of a sugar mill and refinery in Warsaw, and that shortly thereafter, the building was bombed, burned and totally destroyed. Later, after forcible opening of the remains of the safe, the contents were found to have been destroyed beyond salvage. The Commission found that claimant was the owner of the shares of stock and an award was based upon that finding. (*Claim of Thaddeus Z. Orski Przeworski*, Claim No. PO-5843, Dec. No. PO-8665, 23 FCSC Semiann. Rep. 57 (July-Dec. 1965).)

Where, at the request of a claimant, made pursuant to the Decree of February 3, 1947 (*Dz. U. 1947, No. 22, it. 88*) concerning the registration and cancellation of certain bearer certificates issued prior to September 1, 1939, the Municipal Court in Warsaw on May 2, 1951 declared her 450 shares of the *Sp. Akc. Przedalnia i Tkalnia Juty i Lnu WARTA*, numbered 7101 through 7550, to have been lost, and cancelled them, the Commission found that claimant was the owner of the 450 shares. (*Claim of Helena Wexler*, Claim No. PO-10131, Dec. No. PO-8736.)

Transfer of shares of stock by gift.—In another claim based in part upon stock certificates and bonds assertedly destroyed in Warsaw, the testimony disclosed that on September 12, 1942 claimant and his parents met in the office of an attorney in New York to draft an instrument for the transfer of title of certain real property in Poland from the parents to claimant. When the question was raised whether securities owned by the father in Poland should be included in the instrument, the attorney advised that since the securities were all bearer shares of stock and bonds, their inclusion would not be necessary. Subsequently, the father delivered to claimant a sheet of paper listing the securities. The Commission held that the validity of the transaction concerning the securities depended on the laws of the state where the transaction took place; and that under the laws of New York, shares of stock and bonds may be subject of a valid gift provided there is actual or symbolic delivery thereof coupled with a present donative intent, but there is no valid gift where the donor remains in control and dominion of the stock. Here, the donor had reas-

serted his ownership of the securities in 1944 by registering the securities with the Treasury Department on Form TFR-500 as his own property and not that of the claimant. The Commission concluded that the gift was not validly consummated and did not transfer title to the securities. Finding that claimant had failed to establish his ownership of the securities and their destruction, the Commission denied the claim. (*Claim of Jerzy George Friede*, Claim No. PO-7018, Dec. No. PO-8955.)

Constructive delivery of bearer shares of stock was recognized where a claimant's aunt executed a statement on December 20, 1962 declaring that in 1943 she had made an irrevocable decision to transfer 298 shares of stock to claimant. Although no written instrument had been executed at the time of the decision to transfer, affidavits from three other relatives indicated that they had been informed of the transfer at the time. Two of the affiants, acting as trustees for family members owning stock, had deposited 2,815 shares with a banking institution in Poland in 1939, including the 298 shares in question; and after notification of the transfer had considered claimant to be the owner of the 298 shares. The Commission held the transaction in 1943 to be a donation *inter vivos* by which the donor divested herself of the 298 shares in favor of claimant. The Commission recognized the general rule that a gift of property not in the possession of the donor should be evidenced by a written instrument, and that the gift is consummated by delivery of the instrument without physical delivery of the property, especially where the donor has no power to make such delivery; but held that in the absence of a written instrument of gift, the decision of the donor to transfer the stock and her communication to the trustees were sufficient to create a constructive delivery of the property and effectuate a valid gift. (*Claim of John Claude Ignace Savoir*, Claim No. PO-10283, Dec. No. PO-4546.)

Proof of ownership of shares of stock.—Where the evidence showed that stock certificates were never issued by a nationalized corporation but claimant had obtained interim certificates for paid shares of stock in the amount of 53,109,500 reichsmarks credited in the books of the corporation to claimant's nominee, claimant's ownership interest was deemed established in a claim for the nationalization of the assets of *Hydrierwerke Poelitz A.G.* by the Government of Poland. (*Claim of Standard Oil Company*, Claim No. PO-6073, Dec. No. PO-9331.)

On the other hand, presentation to the Commission of 15,552 certificates of *Zaklady Hohenlohego Sp. Akc.* with a sworn statement dated August 13, 1965 by claimant's brother confirming that claimant was the sole owner of the securities, did not warrant a finding by the Commission that claimant owned the shares of stock on September 23, 1946, the date when *Zaklady Hohenlohego Sp. Akc.* was nationalized by the Government of Poland. The record disclosed that the 15,552 shares of stock had been owned by claimant's father, the late Jacques Setton, and were on deposit for his estate in the *Banque Belge pour l'Etranger* and its successor, the *Banque de l'Union Parisienne* of Paris, from 1933 until the filing of the claim. Claimant alleged that he acquired title to the 15,552 shares in May 1945 when he visited his family

in Cairo, Egypt, and all other members of the family relinquished their interests in the stock to him. However, the Commission found that claimant had failed to establish that title to the 15,552 shares had been transferred to him, and concluded that at the time of the nationalization of *Zakłady Hohenlohego Sp. Akc.*, the claimant owned $\frac{1}{6}$ of the 15,552 shares of stock, which was the interest he inherited in his father's estate upon his father's death in 1933. (*Claim of Joseph J. Setton*, Claim No. PO-4035, Dec. No. PO-9207.)

In the Matter of the Claim of

Claim No. PO-5212
No. PO-5583
Decision No. PO-9024

SYDA S. SPITZER

Against the Government of Poland

Mining concession constituted "rights and interests in and with respect to property" under Polish Claims Agreement of 1960, and annulment thereof by Poland constituted a taking of property within meaning of Agreement.

Value of mining concession determined on basis of potential ore reserves on date of taking after appropriate depletion and depreciation deductions at rate of 5% per annum.

PROPOSED DECISION

These claims, for \$55,776.00 and \$5,846,154.00, respectively, are based upon the ownership and loss of (1) certain interests in real property, (2) uncollected rents, (3) pension rights, and (4) interests in mining rights and leases for the exploitation of minerals. The claims were filed on September 19 and 20, 1961, respectively, by SYDA S. SPITZER, a national of the United States since her naturalization on February 10, 1947, and by her husband, Tadeusz B. Spitzer, a national of the United States since his naturalization on November 25, 1946. The Commission has subsequently been informed that Tadeusz B. Spitzer died testate, a resident of California, on August 24, 1962, but that his last will was not offered and admitted to probate. The Commission finds that under the laws of the State of California concerning community property, claimant SYDA S. SPITZER acquired the sole ownership of the claim by survivorship. Consequently, SYDA S. SPITZER was substituted as party claimant in lieu and stead of Tadeusz B. Spitzer.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended, (64 Stat. 12 (1950), 22 U.S.C. § 1623(a))

(1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Polish Claims Agreement of 1960 (*Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States*, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960)). That Agreement provides as follows:

Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States for

- (a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property;
- (b) the appropriation or the loss of use or enjoyment of property under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property . . . ; and
- (c) debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland. (*Polish Claims Agreement of 1960, supra*, Article II.)

The Agreement further defines "claims of nationals of the United States" as including

rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropriation or other taking to . . . [July 16, 1960], have been continuously owned . . . (a) directly by natural persons who were nationals of the United States. . . . (*Polish Claims Agreement of 1960, supra*, at Annex, Paragraph A. See also 14 *FCSC Semiann. Rep.* 186 (Jan.-June 1961).)

Thus where property was owned by a natural person at the time of its nationalization, appropriation, or other taking, a claim based upon such loss of property is not compensable under the Agreement unless such person was a national of the United States at the time of such nationalization, appropriation, or other taking, and also unless the claim was owned continuously thereafter until July 16, 1960 by a national or nationals of the United States.

For a definition of the term "nationals of the United States," we refer back to Section 2(c), Title I, of the International Claims Settlement Act of 1949, as amended, which provides that:

The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

(1) Real Property

(a) The Commission finds that SYDA S. SPITZER and Tadeusz B. Spitzer were each the owners of a one-fourth ($\frac{1}{4}$) interest in real property, registered in Liber No. 299 of the cadastral district of Krakow IV (Piasek), consisting of two land parcels numbered 456 and 457, measuring 146 and 285 square meters, respectively, improved by a 3-story apartment building situated at No. 18 Krupnicza Street in Krakow.

The original claimants did not seek compensation for the loss of this property, because they had no evidence that the property had been taken by Poland. They sought compensation for the loss of rentals (*infra*). However, the Commission finds that while this building was not formally nationalized or taken by the Government of Poland, nevertheless the aforesaid claimants lost the use and enjoyment of the property pursuant to the laws and decrees controlling rental property in Poland within the meaning of Article 2(b) of the Polish Claims Agreement of 1960, on the effective date of the Law of January 30, 1959, i.e., February 12, 1959 (*Dz. U. 1959, No. 10, item 59*). (See *Claim of Jan Glowacki*, Claim No. PO-3455, Dec. No. PO-1636, 19 FCSC Semiann. Rep. 25 (July-Dec. 1963).)

Since claimant, upon the death of her husband, acquired the sole ownership of the claim, her interest therein is now based upon a one-half ($\frac{1}{2}$) share in the entire property.

In arriving at the value of the apartment building, the Commission has considered claimant's description thereof, and reports of value of land and buildings in locations outside of the business center of Krakow, where the property is situated. Based upon all available information, including statements concerning the pre-war rentals of the apartment building, the Commission finds that this property, at the time of the loss, was worth \$48,000.00, and that the interest of the claimant in the property had a value of \$24,000.00.

(b) The Commission further finds that SYDA S. SPITZER was the owner of a two-sixths ($\frac{2}{6}$) interest in real property, registered in Liber Nos. 696, 697 and 719 of the land books of Rabka (new Liber Nos. KW-17742, KW-17743 and KW-17744), consisting of the following land parcels:

| | Square meters |
|--|------------------|
| No. 648 of an area of | 689 |
| Nos. 120/37 and 120/38 of an area of | 686 |
| No. 120/9 of an area of | 939 |
| Total | 2,314 |

Claimant's now deceased husband, Tadeusz B. Spitzer, was

the owner of a one-sixth ($\frac{1}{6}$) interest in the same property. Since claimant, upon the death of her husband, acquired the sole ownership of the claim, her interest is now based upon a one-half ($\frac{2}{6}$ plus $\frac{1}{6}$) share in this property.

The record shows that prior to the war the property was improved with a hotel, by the name of "SWIT," but that the improvements were totally destroyed during the war.

The record further shows that this property was subject to Article 34 of the Polish Decree of March 8, 1946 (*Dz. U. 1946, No. 13, it. 87*) which provided for the taking by the Government of Poland as of January 1, 1956 of real property considered abandoned during the war by its owners. The record further shows that the property is still recorded in the name of the previous owners, but parcel No. 648 has been assigned for the use of a Children's Sanitarium in Rabka, parcels Nos. 120 37 and 120 38 were assigned to a private individual for building purposes, and parcel No. 120 9 is now used and owned by the local Health Resort Government of Rabka. Accordingly, and in the absence of evidence to the contrary, the Commission finds that the above real property in Rabka was taken by the Government of Poland on January 1, 1956.

In arriving at the value of the land in question, the Commission has considered values of land in resort places such as Rabka, and based upon all available information, finds that the value of 2,314 square meters of land, at the time of its taking was \$12,000.00, and that claimant's interest in the property was worth \$6,000.00.

The Polish Claims Agreement of 1960 provides for the payment of compensation for property which was nationalized, appropriated, or otherwise taken by the Government of Poland. It does not settle or discharge claims based upon damage to or destruction of property during World War II, or the taking of property by forces occupying Poland during the war. (See *Claim of Dominick W. Przybylinski*, Claim No. PO-1358, Dec. No. PO-669, 17 FCSC Semiann. Rep. 49 (July-Dec. 1962).) The claim for the improvements is therefore denied.

(2) *Uncollected Rentals*

A portion of the claim is asserted for the loss of rentals from the apartment building and hotel accrued but not collected from the outbreak of the war and for 30 years thereafter.

Any such losses of rentals which occurred prior to the naturalization of the original claimants would not be compensable under the Agreement. The rents from the date of naturalization to the date of the loss of the apartment building in Krakow are

not ascertainable. However, even if these rentals would be ascertained, claimant could not assert a loss, because in the post-war period the rentals from apartment houses in Poland were so low that they barely covered the taxes, maintenance expenses and other outlays for repairs. Rents for any period of time after February 12, 1959 belong to the Government of Poland rather than to the previous owners of the property, and are not a proper basis for a claim under the Agreement. Compensation is granted to the claimant in the form of 6% interest on the award for the apartment building from the date of loss, as stated below, and no additional compensation appears justifiable. The rentals from the property in Rabka are equally not compensable, since the record does not disclose that the land had been rented, and the evidence does not reveal that rentals, if any, belonging to the claimant were taken by the Government of Poland.

The portion of the claim relating to uncollected rentals is therefore denied.

(3) *Pension Rights*

Tadeusz B. Spitzer, in his claim asserted that he lost his rights under the Polish social security system as a former private employee, because a law enacted in 1958 introduced certain qualifications which made it impossible for him to claim his insured rights from the appropriate Polish insurance institution. The new restrictions amounted, according to claimant, to the elimination of annuities payable to persons who did not work in Poland after World War II.

The Commission has considered this portion of the claim and finds that claimant has failed to establish that annuities payable to him were nationalized or taken by the Government of Poland within the meaning of the Agreement (*supra*). A change in the legal provisions which may have restricted the eligibility of insured persons to individuals who have been working in the post-war years in Poland, and eliminated persons who did not work after the war in Poland is not deemed to be a measure of nationalization or taking of property rights as asserted by Tadeusz B. Spitzer.

In the absence of evidence which would show that claimant's interests in annuities were taken by the Government of Poland in a discriminatory way, or that such measures were applied individually to the claimant, the Commission finds that this portion of the claim for the loss of pension rights is equally not compensable under the Agreement and it is hereby denied.

(4) *Interests in Mining Rights and Leases*

Tadeusz B. Spitzer asserted that he was, prior to the war, the part owner of certain mining fields known as Tadeusz, Tadeusz II and Ludwik in the area of Lesko, for the exploitation of copper, pyrite and arsenic. He also asserted that he entered into lease agreements with various land owners in the area of Kielce, for the exploitation of minerals, such as clay, lime, etc.

The evidence submitted to the Commission discloses that Tadeusz B. Spitzer and one Ludwik Hubicki obtained in 1938 a concession from the Polish Government for the exploitation of the mining field Tadeusz II, and that proceedings had been instituted for the granting of concessions for the exploitation of the mining fields Tadeusz and Ludwik. The evidence also shows that in 1938 leases were concluded between Tadeusz B. Spitzer and members of the family Hubicki with numerous landowners for the right to exploit minerals (earth, clay, lime, gypsum and other types of earth).

However, the evidence does not disclose that Tadeusz B. Spitzer and his associates invested any funds in the mining operations, except for the initial exploration of the mining fields and leases. The evidence further does not reveal that prior to the war, during the war, and immediately after the war any significant exploitation of the mining fields took place and that any minerals were, in fact, commercially exploited. It should be noted that the only mining concession on record, that for the mining field Tadeusz II, was issued as late as September, 1938. The record does not show that based upon this mining concession any improvements were added to this mining field between September, 1938 and September, 1939, the time of the outbreak of World War II. The record is also bare of any evidence which would indicate that Tadeusz B. Spitzer actually started any operations on the other mining fields, for which the granting of a concession was pending, or that he started any operations on the property which had been leased for the purpose of exploiting earth minerals. It is evident that during the war Tadeusz B. Spitzer, then a resident of the United States, could not have engaged in any business activities in Poland. After the war, the Polish Government by the enactment of the Law of January 3, 1946 (*Dz. U. 1946, No. 3, item 17*), effective February 5, 1946, ordered the transfer of all mines and mining rights to the Polish State (Article 3 subd. (1) (i) of that Law). Clearly, claimant could not undertake any new business operations after the enactment of this law.

The Commission therefore finds that claimant has not established that Tadeusz B. Spitzer owned any property of value which he lost as a result of the nationalization of the mining

rights. Claimant also failed to establish that any of his mining rights were individually nationalized or taken by the Government of Poland. In the absence of evidence to the contrary, the Commission would have to conclude that the mining rights of Tadeusz B. Spitzer were taken on the effective date of the aforesaid Law of January 3, 1946. The property at that time was not owned by a national of the United States, and the claim would not be compensable under the Agreement (*supra*), even if claimant has substantiated that Tadeusz B. Spitzer owned valuable property on the aforesaid mining fields.

In view of the foregoing, the portion of the claim for the loss of mining rights and leases is also denied.

Summarizing, the claimant is entitled to compensation under the Polish Claims Agreement of 1960 in the principal amount of \$30,000.00.

The Commission has decided that in granting awards on claims under the Polish Claims Agreement of 1960, interest shall be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the effective date of the Agreement. (See *Claim of John Hedio Proach*, Claim No. PO-3197, Dec. No. PO-652, 17 FCSC Semiann. Rep. 47 (July-Dec. 1962).) Accordingly, the amount of the award will be increased to that extent.

AWARD

An award is hereby made to SYDA S. SPITZER in the principal amount of Thirty Thousand Dollars with interest thereon at the rate of 6% per annum from the respective dates of taking to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Three Thousand Six Hundred Ninety-One Dollars and Eight Cents.

Dated at Washington, D.C.
November 5, 1965.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on November 5, 1965 granting claimant an award in the principal amount of \$30,000.00 for the loss of her interest in certain real property in Krakow and Rabka, Poland, and denying the claim for uncollected rentals, pension rights, and interests in mining property.

Claimant, through counsel, filed objections with respect to the denial of the portion of the claim for the loss of her interest in

a mining concession known as "Tadeusz II." No objections were submitted with respect to any other item of the claim.

Claimant's counsel filed a brief and at the hearing introduced the expert testimony of Justin B. Gowen, formerly chief geologist of the geological department and assistant manager of mines of "Giesche, Spolka Akcyjna," a leading mining corporation in Poland. The expert witness is presently employed as a geologist of the Bureau of Mines of the United States Department of the Interior. The witness testified that the mining concession "Tadeusz II" was in the area near Lesko in southern Poland, where the extraction of pyrite was under investigation since before World War I. He further stated that information obtained partly during his stay in Poland and partly on the basis of the documentation which was presented to him by the claimant indicates that the pyrite deposits of "Tadeusz II" exceeded 5,000,000 tons and that royalties for the extraction of a ton of pyrite would have been approximately \$0.10 per ton of the mineral. He further stated that the capacity of extraction under the methods in use in Poland would have been between 200,000 and 250,000 tons of pyrite per year.

Claimant's counsel presented argument and stated that the concession for the extraction of pyrite in the mine "Tadeusz II" was very valuable, that it was taken in 1953, and urged the Commission to determine the value of claimant's interest in the concession at \$375,000.00.

The Commission has given due consideration to counsel's argument presented at the hearing, to the testimony of the expert witness, and to the entire evidence of record, and now finds the following:

The Government of Poland granted a concession for the extraction of pyrite to Tadeusz Spitzer, claimant's predecessor, and to one Ludwik Hubicki on September 9, 1938. The concession encompassed the mining of the iron ore (pyrite) in an area in the vicinity of Lesko measuring 240½ hectares. A mining and smelting corporation by the name of "Wspolnota Interesow Gorniczo-Hutniczych" in Katowice offered to the owners of the concession a royalty agreement, whereby the concessionaires would have received 50 Polish grosh or \$0.10 for each ton of the product extracted on the spot; but the outbreak of World War II prevented the realization of this business proposition.

By Decree of May 6, 1953, effective December 1, 1953 (*Dz. U. 1953, No. 29, it. 113*) all the prewar mining concessions were annulled and the interest of Tadeusz Spitzer in the concession was cancelled.

With respect to the value of the concession, the Commission

finds that the reserves of pyrite of approximately 5,000,000 tons would have yielded royalties for ten years based upon an extraction of 250,000 tons per year. However, allowance must be made for the depletion and depreciation of the ore and of the installations at a rate of five per cent (5%) per annum from 1938, the date of the concession, to 1953, the date of annulment. (See *Claim of Socony Mobil Oil Company*, Claim No. PO-2650, Dec. No. PO-1769, 19 FCSC Semiann. Rep. 30 (July-Dec. 1963).) Accordingly, the Commission finds that in 1953, at the time of taking, the value of the concession based upon the potential ore reserves then still in existence was \$125,000.00, and that claimant is entitled under the Polish Claims Agreement of 1960, to an award in the principal amount of \$62,500.00 for the half-interest her predecessor, Tadeusz Spitzer, owned in the concession.

In view of the foregoing, it is

ORDERED that the Proposed Decision be modified in accordance with the above findings, and as modified, entered as the Final Decision in this claim; and it is further

ORDERED that the award hereinafter granted be certified for payment to the Secretary of the Treasury.

In all other respects the Proposed Decision is affirmed.

AWARD

An award is hereby made to SYDA S. SPITZER in the principal amount of Ninety-two Thousand Five Hundred Dollars (\$92,500.00) with interest thereon at the rate of 6% per annum from the respective dates of taking, to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Twenty-eight Thousand Five Hundred Thirty-Four Dollars and Eighty-three Cents (\$28,534.83).

Dated at Washington, D.C.

January 19, 1966.

Franchise—concession.—In a claim by a company which had rights to explore, exploit, and extract petroleum from about 2,000 *morgs* of land in Poland, an award was granted for the loss of certain oil wells, equipment and installations, and underground oil reserves, but a portion of the claim based upon the loss of exploration rights in areas which had not yet been developed by the company was denied. The Commission held that this portion

of the claim was not compensable since it depended entirely upon the conjectural and speculative assumption that additional oil sufficient for economic exploitation would have been discovered. In essence, this part of the claim was for the loss of potential future earnings from possible discoveries of oil. The Commission referred to its repeated holding that claims for losses of prospective earnings are not allowable under international law, citing the *Claim of United Shoe Machinery Corporation*, Claim No. SOV-40353, Dec. No. SOV-3122, 10 FCSC Semiann. Rep. 237 (Jan.-June 1959), *Claim of Aris Gloves, Inc.*, Claim No. CZ-1170, Dec. No. CZ-3035, 17 FCSC Semiann. Rep. 239 (July-Dec. 1962), and *Claim of Socony Mobil Oil Company, Inc.*, Claim No. PO-2650, Dec. No. PO-1769, 19 FCSC Semiann. Rep. 30 (July-Dec. 1963). (*Claim of Robert Stiefel*, Claim No. PO-6101, Dec. No. PO-4438.)

In the instant *Spitzer* claim, on the other hand, where after denial on similar grounds the claimant requested an oral hearing and introduced testimony indicating that the pyrite deposits of the exploitation area exceeded 5,000,000 tons and that the royalties for the extraction of a ton of pyrite would have been approximately \$0.10 per ton of the mineral, the Commission concluded that the annulment of claimant's mining concession by the Decree of May 6, 1953 (*Dz. U. 1953, No. 29, it. 113*), effective on December 1, 1953, gave rise to a compensable claim under the Polish Claims Agreement of 1960. In another instance, claimants owned fractional interests in land in Poland from which oil was being extracted by the Magdalena Oil Company under an agreement allotting 90% of the gross income from the oil to the company, and 10% to the land owners, each participating therein in proportion to his interest in the land. The land and oil rights having been nationalized by the Government of Poland on June 30, 1947, awards were made to claimants representing the value of their participation in the oil income as well as their interests in the land itself. (*Claim of Michalina M. Walker, et al.*, Claim No. PO-2139, Dec. No. PO-8826, 23 FCSC Semiann. Rep. 61 (July-Dec. 1965).)

Patent rights.—Patent rights were deemed to constitute “rights and interests in and with respect to property” and their loss was found compensable under the Polish Claims Agreement of 1960, where 25 registered patents and 39 pending patents owned through International Standard Electric Corporation, a company organized under the laws of Delaware, were appropriated by the Government of Poland pursuant to the Decree of December 20, 1949 (*Dz. U. 1949, No. 63, it. 496*). Adopting the same principles and methods applied in the *Claim of International Telephone and Telegraph Corporation* against the Government of Czechoslovakia (appearing on page 449), the Commission held that claimant was entitled to compensation for the loss of the patents owned through its American subsidiary at the rate of \$225 for each patent in force and \$120 for each pending patent, which amounts were based upon the costs of investment in the patents and patent applications. (*Claim of International Telephone and Telegraph Corporation*, Claim No. PO-5306, Dec. No. PO-9224, 24 FCSC Semiann. Rep. 71 (Jan.-June 1966).)

Other property interests—Pledged property.—Where shares of stock in a nationalized corporation had been pledged as collateral

to secure the repayment of a debt, the award for loss in connection with nationalization of the enterprise was made to the pledgee, and not to the pledgor. One claimant held 9,242 shares of stock in a Polish corporation as trustee for a group of United States nationals. Included in the 9,242 shares were 3,542 shares which had been pledged to claimant as security for the payment of a debt of \$67,500.00 owned by five other persons. In its Proposed Decision, the Commission found that claimant, as pledgee, had the right to pursue any remedy which the owners of the pledged stock had for loss of property, and to apply the proceeds first to payment of the debt secured by the pledge, and had the duty to pay to the owners any excess beyond the amount of the indebtedness. One of the debtors, Anna Marcowicz, had not become a national of the United States until after the corporation had been nationalized. The Commission held that she had retained the right of beneficial ownership of the stock or the claim based thereon, throughout the period of the pledge; and that the pledged shares held by claimant against payment of her portion of the debt (885½ shares) were not owned by a national of the United States on the date of loss. Accordingly, claimant's award was based upon the value of 8,356½ shares. After objection and oral hearing, however, the Commission held in its Final Decision that claimant's award should include an amount representing the share of the \$67,500.00 obligation owed by Anna Marcowicz, which amounted to \$16,875.00. In effect, to the extent of her security interest, the pledgee was considered the legal owner of the pledged 885½ shares of Anna Marcowicz, and entitled to an award based thereon, not to exceed the amount of the security interest, despite the pledgor's late acquisition of United States nationality. Although the value of the 885½ shares at the time of nationalization was \$57,557.50, the increase in claimant's award was limited to \$16,875.00 since this was the amount of the indebtedness secured by the shares, and claimant would have been under a duty to pay any amount received in excess of that sum to the pledgor, who was not a United States national. (*Claim of Helen Sigman, as Trustee under the Last Will and Testament of Leon Sigman, Deceased*, Claim No. PO-5955, Dec. No. PO-9136.)

In the Matter of the Claim of

Claim No. PO-2490
Decision No. PO-4665

SONIA KERNER

Against the Government of Poland

Ownership of property determined by law of place where property is situated. Title to property in Poland passed, for purposes of Polish Claims Agreement of 1960 and Section 4(a), Title I, of the 1949 Act, to widow of deceased under will probated in New York. Will deemed to be valid under laws of Poland although never offered for probate in Poland.

PROPOSED DECISION

This claim, for \$140,000.00, is based upon the asserted ownership and loss of improved real property located in the City of Krakow, Poland. Claimant, SONIA KERNER, has been a national of the United States since her naturalization on November 18, 1955.

Under the Polish Claims Agreement of 1960, claims by nationals of the United States for "(a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property . . ." are settled and discharged. (*Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States*, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960), Article II.)

The Agreement further defines "claims of nationals of the United States" as including

rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropriation or other taking to . . . [July 16, 1960] have been continuously owned . . . (a) directly by natural persons who were nationals of the United States. (*Polish Claims Agreement of 1960, supra*, at Annex, Paragraph A. See also 14 FCSC Semiann. Rep. 186 (Jan.-June 1961).)

The Commission finds, on the basis of official Polish documentation and other evidence of record, that claimant's husband, the late Solomon Kerner, was the owner of improved real properties located at 10 Boguslawskiego, formerly Jasna Street and 29 31 Bohaterow Stalingradu, formerly Starowislna Street, Krakow, Poland, that he died on February 5, 1955, that as to both these properties Solomon Kerner died intestate and pursuant to the laws of Poland claimant inherited a one-fourth and her son Theodore Kerner a three-fourths interest in these properties. The Commission further finds that the properties were taken by the Government of Poland on January 1, 1956, pursuant to Article 34 of the Decree of March 8, 1946 (*Dz. U. 1946, No. 13, Item 87*).

Theodore Kerner, a national of the United States since his naturalization on November 11, 1954, did not file claim for his interest. Claimant has submitted a statement executed by Theodore Kerner on May 25, 1963 in which he renounces in favor of his mother any claims to the estate of his late father. Although the real property did not become part of the decedent's estate, assuming that Theodore Kerner had reference to the real properties subject of this claim, the renunciation is in effect an assignment

made after the date of filing claim with the Commission. Pursuant to Commission regulations, this renunciation cannot be given effect to enlarge claim of SONIA KERNER. Accordingly so much of this claim as is based on the interest of Theodore Kerner is denied.

In arriving at the value of the properties, the Commission has considered their description as afforded from the evidence submitted by claimant and the Commission's independent investigation concerning the property.

The property at 10 Boguslawskiego Street consisted of a five (5) story brick apartment building, equipped with electricity and plumbing, having approximately fifty (50) apartments, in good condition and located at a corner in a good area of the city.

The property at 29/31 Bohaterow Stalingradu Street consisted of a five (5) story brick apartment building, equipped with electricity and plumbing, having approximately ninety (90) apartments and six (6) stories in very good condition located in the commercial area of the city.

On the basis of the entire record, including information available to the Commission concerning the value of property in Krakow similar to that which is the subject of this claim, the Commission finds that the value of claimant's property, that is 10 Boguslawskiego Street and 29/31 Bohaterow Stalingradu Street, at the time of taking by the Government of Poland was worth \$68,200.00 and \$103,332.00, respectively. Accordingly, the Commission concludes that claimant is entitled under the Polish Claims Agreement of 1960 to an award in the amount of \$42,883.00 for the loss.

The Commission has decided that in granting awards on claims under the Polish Claims Agreement of 1960, interest shall be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the effective date of the Agreement. (See the *Claim of John Hedio Proach*, Claim No. PO-3197, Dec. No. PO-652, 17 FCSC Semiann. Rep. 47 (July-Dec. 1962).) Accordingly, the amount of the award will be increased to that extent.

AWARD

An award is hereby made to SONIA KERNER in the amount of Forty-two Thousand Eight Hundred Eighty-three Dollars (\$42,883.00) with interest thereon at 6% per annum from January 1, 1956 to July 16, 1960, the date of the Polish Claims Agree-

ment, in the amount of Eleven Thousand Six Hundred Eighty-five Dollars and Sixty-one Cents (\$11,685.61).

Dated at Washington, D.C.

August 27, 1964.

FINAL DECISION

By Proposed Decision dated August 27, 1964, the Commission found that claimant inherited a one-fourth interest in improved real properties located at 10 Boguslawskiego Street and 29 31 Bohaterow Stalingradu Street, Krakow, from her husband Solomon Kerner, who died intestate on February 5, 1955; and that said properties were taken by the Government of Poland on January 1, 1956. An award of \$42,883.00 was granted to claimant for the loss of her one-fourth interest in said properties.

Claimant objected to that portion of the Proposed Decision which found that her husband, the late Solomon Kerner, died intestate, asserting that the decedent left a Last Will and Testament which was probated in the State of New York pursuant to the provisions of which she was entitled to the entire interest in the subject real properties.

In the alternative, claimant's son Theodore Kerner petitioned to join as co-claimant and asserted his claim for the loss of a three-fourths interest in the subject property.

Full consideration having been given to the objections as contained in the brief submitted by counsel for claimant, and upon review of the entire record comprising this claim, including a certified copy of Solomon Kerner's Last Will and Testament, the Commission now finds that in view of the fact that the Will in question would be valid according to the law of Poland, and that it has in fact been probated in the State of New York, and that only ancillary proceedings would be required in Poland, claimant inherited the entire interest in the subject properties and was the sole owner of 10 Boguslawskiego Street and 29 31 Bohaterow Stalingradu Street, Krakow, when they were taken by the Government of Poland on January 1, 1956.

Accordingly, the Commission concludes that claimant is entitled under the Polish Claims Agreement of 1960, to an award of \$171,532.00 for her loss.

The Commission has decided that in granting awards on claims under the Polish Claims Agreement of 1960, interest shall be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the effective date of the Agreement. (See

the *Claim of John Hedio Proach*, Claim No. PO-3197, Dec. No. PO-652, 17 FCSC Semiann. Rep. 47 (July-Dec. 1962).) Accordingly, the amount of the award will be increased to that extent.

In view of the foregoing, the petition of Theodore Kerner to join in this claim, serving no useful purpose, is denied.

In all other respects, the Proposed Decision is affirmed.

AWARD

An award is hereby made to SONIA KERNER in the principal amount of One Hundred Seventy-one Thousand Five Hundred Thirty-two Dollars (\$171,532.00), with interest thereon at 6% per annum from January 1, 1956 to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Forty-six Thousand Seven Hundred Forty-two Dollars and Forty-six Cents (\$46,742.46).

Dated at Washington, D.C.

January 5, 1966.

Inheritance—Legal sources.—During the period from 1918 to January 1, 1947, the legal provisions governing the inheritance of property in Poland differed according to geographical areas as follows:

1. Western Poland, consisting of areas under German jurisdiction until the end of World War II, was governed by the provisions of the *Bürgerliches Gesetzbuch* of 1896 (German Civil Code), as amended.

2. Southern Poland, formerly known as Galicia and Lodomeria, an area once under Austrian jurisdiction, employed the provisions of the *Allgemeines Bürgerliches Gesetzbuch* of 1811 (Austrian Civil Code).

3. In Central Poland, the area of the former Duchy of Warsaw, the Code Napoleon in its version of 1807 with subsequent amendments was in force.

4. Eastern Poland, an area which had been annexed by Russia in 1815, was governed by Russian civil law as contained in volume X part I of the Russian Code of Laws (*Zwod Zakonow*).

5. The districts of Orawa and Spisz (Szepes), a very small portion of Southwestern Poland which belonged to Hungary prior to World War I and was incorporated into Poland on July 28, 1920, were under Hungarian law until 1922 when it was replaced by the provisions of the Austrian Civil Code already in force in Southern Poland.

The law of inheritance was unified for all of Poland by the Decree of October 8, 1946 (*Dz. U. 1946, No. 60, it. 328*), effective January 1, 1947.

Presumption of simultaneous death in absence of better evidence.—In view of the circumstances under which many persons perished in Poland during World War II, many claimants encountered difficulties in establishing the exact dates of death of their predecessors in interest.

This was of particular importance in cases in which property allegedly was inherited from one person who was established to have been the owner, through one or more other persons also deceased. In the absence of evidence to establish the exact dates of death, the Commission applied Article 21 of the Polish Decree of August 29, 1945 (*Dz. U. 1945, No. 40, it. 223*) providing that in case of doubt, persons who perished during World War II shall all be presumed to have died at the same time.

Property in Lesko, Poland, which had been owned in equal shares by a husband and wife, both of whom died during World War II, was taken by the Government of Poland on January 1, 1956. Claimants were two sisters of the wife, who also was survived by the child of a deceased sister who was not a national of the United States. The husband was survived by relatives who were not United States nationals. Had the husband predeceased the wife, claimants each would have inherited one-third of the property, as alleged, with the other one-third going to the niece. In the absence of evidence as to dates of death, it was presumed that husband and wife died simultaneously, so that his one-half interest in the property was inherited by his relatives, and each of the claimants was found to have inherited a one-sixth interest in the property. (*Claim of Chana Thee, et al.*, Claim No. PO-3830, Dec. No. PO-2879, 20 FCSC Semiann. Rep. 19 (Jan.-June 1964).)

More frequently the property was alleged to have been owned by an uncle or aunt, but was found instead to have been owned by the spouse of the blood relative. Under Polish law, a person does not inherit by intestate succession from one not consanguineously related. (*Claim of Jacob Sweiman*, Claim No. PO-10039, Dec. No. PO-7349.) Hence, in the absence of a showing that the spouse predeceased the blood relative, they were presumed to have died simultaneously, and claimant inherited nothing. (*Claim of Dora Fenster, et al.*, Claim No. PO-5959, Dec. No. PO-7022.) The presumption of simultaneous death was, of course, rebuttable by any evidence of a persuasive nature which would form the basis for findings of dates of death or a finding that one person predeceased another.

Testamentary succession.—In the Polish claims program the usual situation involving inheritance was one of intestacy, involving the law of the *situs* for real property, and the law of the domicile at time of death for personal property, which would include claims for the loss of real property if the loss occurred prior to decedent's death. (See annotations to *Claim of Mary Hrusorsky*, appearing at page 399.) In the occasional cases where a will had been executed, in most instances it had not been probated and no probate proceedings were contemplated; and the

Commission found the property to have passed according to the appropriate intestacy law. In rare cases wills had been probated in Polish courts, and the court decisions were followed as to succession of property within their jurisdiction. The *Kerner* claim is one of a few in which a will had been probated in the United States but not in Poland, and the estate included real property in Poland which had not yet been taken from the decedent at the time of his death. In its Final Decision in the *Kerner* claim the Commission held that the property passed according to the terms of the will rather than by intestacy, having found that the will fulfilled the requirements of Polish law, and also that a will found to be valid in the courts of a decedent's domicile is accepted as valid under Polish law. All necessary steps had been taken save ancillary proceedings in Poland looking toward change in record ownership, which would reasonably have been regarded as futile in any event, in view of the climate in Poland with respect to absentee private ownership of real property.

Similarly, where a claimant submitted a verified copy of the last will of her husband who had died on January 11, 1942, with evidence that it had been probated in the High Court of Justice of Llandudno, England, the Commission concluded that claimant inherited a life interest in the entire property of the decedent which included real property in Poland, in accordance with the terms of the will. The will had not been probated in Poland. (*Claim of Elizabeth Rykwert*, Claim No. PO-9360, Dec. No. PO-7816, 24 FCSC Semiann. Rep. 45 (Jan.-June 1966).)

Invalid inheritance proceedings in Poland.—Many of the rightful heirs to property in Poland were unaware that they had inherited such property or that the record owners and other relatives through whom inheritance could be claimed had perished. This was particularly true where claimants had come to the United States before World War II. Under the circumstances prevailing during the war and the period immediately following, it could not be expected that such persons would attempt to institute proceedings in Poland to obtain title to property of late relatives. Frequently persons in Poland having inferior inheritance rights or no rights at all took advantage of this situation, instituted inheritance or restitution proceedings, obtained title to or possession of property, sold it to others, and disappeared. In such situations the Commission, if the evidence before it so warranted, would make findings of inheritance rights contrary to those rendered in Poland, to provide compensation to claimants who had wrongfully been deprived of their rights.

In one instance, evidence showed that as of August 20, 1948, claimants Barbara Korn, Michael Korn, Ita Korn, and Marcia Korn had record title to certain real property in Lodz, Poland. On May 7, 1953, one Izaak Goclowski instituted inheritance proceedings in the County Court of Aleksandrow Kujawski by petitioning to be declared the successor to claimants' interest in the property. He presented evidence purporting to show that three of the claimants had died on August 31, 1942; that their mother, claimant Barbara Korn, succeeded to their interests in the property; that she died on August 31, 1943, and the property passed to her purported second husband, Icek Pacanowski; that Icek

Pacanowski died on September 30, 1943 and the property was inherited by his mother, Cymla Pacanowska; and that upon the death of Cymla Pacanowska on October 31, 1943, the property was inherited by her nephew, Izaak Goclawski. As a result, the interest in the property recorded in the name of the Korn family was transferred to Izaak Goclawski who thereupon sold it. Claimants having established clearly that the decision of the Polish court was based upon false and fraudulent evidence, the Commission, under its mandate to decide claims in accordance with principles of international law, justice, and equity, held that for the purpose of the proceeding before it, the Polish decree was ineffectual to deprive claimants of their property interests. (*Claim of Michael Korn, et al.*, Claim No. PO-7036, Dec. No. PO-7140.)

Interlopers in restitution proceedings.—Acquisition of property in Poland by interlopers was more frequently accomplished through use of the restitution provisions of the Decree of March 8, 1946, under which property was taken by the State as abandoned on January 1, 1956 unless restitution thereof was sought and obtained previously by a close relative. It apparently was more feasible for distant relatives or strangers to misrepresent their relationship and obtain possession of property through restitution proceedings than through inheritance proceedings. In such cases, despite Polish restitution of property to a distant relative or stranger after death of the record owner, the Commission found ownership to have devolved upon an American claimant in the direct line of inheritance, where the evidence so warranted. (*Claim of Julius Jablow*, Claim No. PO-1345, Dec. No. PO-1983-A, 20 FCSC Semiann. Rep. 29 (Jan.-June 1964).)

Restitution proceedings under the Decree of March 8, 1946 were distinct and separate from inheritance proceedings. The right to claim restitution of possession was limited to ascendants, descendants, brothers, sisters, and spouses of the former owner; but this limitation had no effect upon the inheritance rights of other persons under the law of intestate succession. In one instance, a claimant was given an award by Proposed Decision representing the value of a one-third interest in property in Poland which she had inherited from her brother, the remaining two-thirds having been inherited by the children of two deceased sisters, who were not nationals of the United States. Claimant objected, contending that she had inherited the entire fee, and submitted a decision of a Polish Municipal Court denying a petition for restitution of the property which had been filed by a nephew, on the ground that he was not within the class of permissible applicants. The Commission affirmed its Proposed Decision, holding that although the decision of the Municipal Court properly found the nephew to be ineligible for restitution of the property under the Decree of March 8, 1946, it did not affect his right to inheritance of an interest in the property by intestate succession. (*Claim of Margarete Kiwi Zwirn*, Claim No. PO-4416, Dec. No. PO-8516, 23 FCSC Semiann. Rep. 74 (July-Dec. 1965).)

Where a claimant was in the opposite situation of having himself obtained restitution of property formerly owned by his mother, and subsequently lost the use and enjoyment thereof, the

Commission limited his award to the one-fourth interest in the property to which claimant was able to establish inheritance rights by intestate succession. The fact that he alone had obtained restitution of the property under the Decree of March 8, 1946 did not preclude the existence of other relatives who inherited ownership interests therein, nor deprive them of such interests. (*Claim of Naum Magasanik*, Claim No. PO-5441, Dec. No. PO-5893.)

Successors to juridical organizations in Poland.—A few claims against Poland were filed by organizations in the United States as successors to the property of former Polish organizations. In one such claim the Commission found that real property formerly owned by the Israelitic Religious Community of Korczyn, which had been extinguished during World War II, was taken by the Government of Poland on January 1, 1956. After denial of the claim by Proposed Decision, the Commission secured additional information through its independent investigation and in an Amended Proposed Decision held that surviving former members of the Community acquired interests in the assets of the defunct organization. Claimant association was founded in New York in 1947 by 150 former members of the Polish Community, constituting five-sixths of the survivors. At the time of loss of the property, more than 85% of them were nationals of the United States. The Commission held that claimant qualified as a national of the United States under the Polish Claims Agreement of 1960; and that, as representative of five-sixths of the survivors of the Polish Community, was entitled to an award of five-sixths of the value of the property taken. (*Claim of Korczyner Relief Committee*, Claim No. PO-8575, Dec. No. PO-894.)

A claimant which was a Michigan nonprofit corporation organized in 1942 by all the surviving members of the former Jesziwas Chachmej School of Learning in Lublin, was found to have succeeded to ownership of the real property in Lublin of the former Polish organization, and to qualify as a national of the United States on May 6, 1960 when the property was taken by the Government of Poland. An award was made for the full value of the property at the time of loss. (*Claim of The Theological Seminary Yeshivath Chachmey Lublin*, Claim No. PO-1743, Dec. No. PO-3360, 20 FCSC Semiann. Rep. 28 (Jan.-June 1964).)

The Order B'nai B'rith was organized in New York in 1843, and in 1885 granted a charter for the organization of a federation of lodges in Germany which became known as District Grand Lodge No. VIII, to which all lodges in Germany were subordinate. On April 10, 1937 the German Government, under its discriminatory anti-Jewish laws, dissolved the B'nai B'rith Order in Germany, and on April 19, 1937 confiscated all of its property. Much of this property subsequently came under Polish jurisdiction and was taken by the Government of Poland on January 1, 1956. The Commission found that upon dissolution of the German lodges, their property became the property of the Supreme Lodge in the United States under its Constitution (a conclusion also reached by German courts and restitution authorities after World War II), and that the German measures of

confiscation were invalid and effected no transfer of ownership. (See the annotations to *Claim of Herbert Brower* appearing at page 483.) An award was made to the parent organization for the value of the property at the time of its taking by the Government of Poland. (*Claim of B'nai B'rith, Supreme Lodge*, Claim No. PO-6819, Dec. No. PO-8866, 23 FCSC Semiann. Rep. 63 (July-Dec. 1965).)

In the Matter of the Claim of
ERNEST H. WEISMAN, ET AL.

Claim No. PO-7203
Decision No. PO-2120

Against the Government of Poland

Property in Poland transferred to a German pursuant to discriminatory laws during World War II not deemed taken thereafter as German-owned under Article 2 of Polish decree of March 8, 1946, for purposes of Polish Claims Agreement of 1960 and Title I of the 1949 Act. Such property deemed taken on January 1, 1956 as abandoned property under Article 34 of March 8, 1946 decree.

AMENDED PROPOSED DECISION

The Commission denied this claim by Proposed Decision dated December 1, 1963, for the reason that the property upon which the claim is based was not owned by nationals of the United States on the date of the loss. The Proposed Decision contains a finding that the property had been taken on April 19, 1946, pursuant to Article 2 of the Polish Decree of March 8, 1946, at which time the claimants were not United States nationals. That Decree relates to the taking of property which was German-owned or which was abandoned after World War II.

Claimant ERNEST H. WEISMAN filed objections and requested an oral hearing which was held on February 18, 1964. Full consideration having been given to the objections and claimant's argument at the hearing, it is

ORDERED that the Proposed Decision be amended as follows:

This claim, for \$35,000.00, is based upon the asserted ownership and loss of claimants' interests in improved real property situated in Wroclaw (Breslau). Claimants, ERNEST H. WEISMAN and SUSAN WEISMAN, have been nationals of the United States since their naturalization on July 24, 1947.

Under the Polish Claims Agreement of 1960, claims by nationals of the United States for "(a) the nationalization or other taking

by Poland of property and of rights and interests in and with respect to property . . .” are settled and discharged. (*Agreement with the Government of the Polish People’s Republic Regarding Claims of Nationals of the United States*, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960), Article 2.)

The Agreement further defines “claims of nationals of the United States” as including

rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropriation or other taking to . . . [July 16, 1960], have been continuously owned . . . (a) directly by natural persons who were nationals of the United States (*Polish Claims Agreement of 1960, supra*, at Annex, Paragraph A. See also 14 *FCSC Semiann. Rep.* 186 (Jan.-June 1961).)

The Commission finds, on the basis of the evidence submitted by the claimants and as a result of its independent investigation in Poland including a report from the Polish authorities, that prior to World War II Vally Brasch, mother of claimant Susan Weisman, was the record owner of a 7/20 interest in real property located at No. 11 Legnicka Street in Wroclaw, registered under Vol. 20, card 745 of the land records of Wroclaw, described as lot No. 694 84, with improvements thereon; that Gertrud Weisman, mother of claimant Ernest H. Weisman, was the record owner of a 2/20 interest in the same property; that Gertrud Weisman and Vally Brasch died during World War II; and that Ernest H. Weisman inherited a one-half interest in his mother’s share of the property and that Susan Weisman inherited her mother’s 7/20 share in the property.

Claimant Susan Weisman asserts that she also inherited a 2/20 additional interest in the property under the terms of the Last Will and Testament of one Carl Leipziger, who died in 1931, but she did not submit documentary evidence in support thereof.

The Commission further finds that in 1939 because this property was Jewish-owned it became the subject of confiscatory measures imposed by the German Government. The Commission holds that these anti-Jewish discriminatory German measures were invalid and ineffective to transfer or divest claimants’ predecessors of their interests in the property. (See *Claim of Herbert Brower*, Claim No. PO-1246, Dec. No. PO-1634, 19 *FCSC Semiann. Rep.* 18 (July-Dec. 1963).) The Commission, therefore, concludes that after World War II claimants were the owners of their respective inherited interests in the property.

The record discloses that the property was taken by the Government of Poland purportedly pursuant to Article 2 of the Decree of March 8, 1946 (*Dz. U. 1946, No. 13, it. 51*), effective April 19,

1946, as having been German-owned. However, the Commission finds that Article 2 of the Decree did not encompass property which, as in this case, had unlawfully been taken by the Nazi Government. This finding conforms with the view of the Polish Courts in such cases. In the Decision by the local Polish Court at Strzelce Opolskie, Sign. Akt. 1 Co. 78 48 it was held that:

the applicant (the petitioner in the proceedings under consideration by that Court) is of Jewish nationality, at present an American citizen. From the above-mentioned confirmations, it is evident that the estate of the applicant cannot be considered as post-German and that the estate was *not* transferred according to Article 2 of the Decree of 8 March 1946 concerning abandoned and German properties (D.U.R.P. 1946, Nr. 13, pos. 87) by the law itself to the ownership of the State because had the applicant at the moment of losing her property been a German citizen, she belonged to the Jewish nationality persecuted by the Germans. The estate of the applicant is, therefore, in the meaning of Article 1 of the above-mentioned Decree, an abandoned estate and according to Article 15, part 1 of the Decree, the applicant is entitled to demand the restoration of the possession of her own property. (Emphasis was supplied by the Court.)

Accordingly, the Commission concludes that the subject property was not taken under Article 2 of the Polish Decree cited above, but that it was, in fact, and in law, taken under Article 34 of that Decree. Article 34 provides, in substance, for the taking by the Polish Government, as of January 1, 1956, of real property which had been abandoned by its owners after the war.

The building which had been erected on the subject property was destroyed during World War II. The Polish Claims Agreement of 1960 provides for the payment of compensation for property which was nationalized, appropriated, or otherwise taken by the Government of Poland. It does not settle or discharge claims based upon damage or destruction of property during World War II, or the taking of property by forces occupying Poland during the war. (See *Claim of Dominick W. Przybylinski*, Claim No. PO-1358, Dec. No. PO-669, 17 FCSC Semiann. Rep. 49 (July-Dec. 1962).) Therefore, the claim for the building is denied.

This leaves for consideration the valuation of the land (building site). The Commission finds that such land was worth \$22,000 on the date of taking—that is, on January 1, 1956. In arriving at this value, the Commission considered the area—1,100 square meters; the location which is approximately six blocks from the main business section of Wroclaw; and the values of similar building sites in that city based upon on-the-spot investigations, reports and appraisals of its Warsaw field office.

Accordingly, the Commission finds that Ernest H. Weisman is

entitled to an award in the principal amount of \$1,100.00 for his $\frac{1}{20}$ interest and that Susan Weisman is entitled to an award in the principal amount of \$7,700.00 for her $\frac{7}{20}$ interest.

The Commission has decided that in granting awards on claims under the Polish Claims Agreement of 1960, interest shall be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the effective date of the Agreement. (See *Claim of John Hedio Proach*, Claim No. PO-3197, Dec. No. PO-652, 17 FCSC Semiann. Rep. 47 (July-Dec. 1962).) Accordingly, the amount of the awards will be increased to that extent.

AWARDS

An award is hereby made to ERNEST H. WEISMAN in the principal amount of One Thousand One Hundred Dollars (\$1,100.00) with interest thereon at 6% per annum from January 1, 1956, the date of the loss, to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Two Hundred Ninety-nine Dollars and Seventy-five Cents (\$299.75); and

an award is made to SUSAN WEISMAN in the principal amount of Seven Thousand Seven Hundred Dollars (\$7,700.00) with interest thereon at 6% per annum from January 1, 1956, to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Two Thousand Ninety-eight Dollars and Twenty-five Cents (\$2,098.25).

Dated at Washington, D.C.
April 8, 1964.

Taking of property as German-owned or as abandoned.—In order to have a compensable claim under the Polish Claims Agreement of 1960 it was necessary that a claimant establish that he suffered a loss within the scope of Article 2. The three categories of losses under Article 2 are those stemming from (a) the nationalization or other taking of property, (b) the loss of use or enjoyment of property, and (c) debts owed by nationalized enterprises or secured by nationalized property. Most of the claims filed against Poland were within the first category, “the nationalization or other taking by Poland of property and of rights and interests in and with respect to property”; and among such claims the largest number of awards were for property found to have been taken by the Government of Poland under the Decree of March 8, 1946 (*Dz. U. 1946, No. 13, it. 87*).

This decree, effective April 19, 1946, provided in Part I, Article 2, for the immediate transfer to the State Treasury of property of the German Reich or German citizens or corporations. Under Part II, offices were established to administer abandoned property, defined as property belonging to persons who had lost possession thereof as a result of the war and had not recovered it. Part III provided for the restitution of such property to the owners upon application filed not later than December 31, 1947. If the owner were dead, application could be made by certain relatives. Applications were to be judged by Polish courts; and persons obtaining possession thereunder acquired the right of ownership of the property after the expiration of ten years from the date of the decision. Until the ten years expired, however, other persons having equal or better rights might obtain changes in the decision. Under Article 34, title to all abandoned real property not previously restored to owners or relatives passed to the State upon the expiration of ten years from the end of the calendar year in which the war ended; i.e., on January 1, 1956. Personal property passed to the State after five years. Property taken by the Polish Government and forming the basis of claims under the Polish Claims Agreement of 1960 was most frequently found to have been taken on January 1, 1956 as abandoned property under Article 34 of the Decree of March 8, 1946. This undoubtedly was due to the dispossession of thousands of Polish property owners during World War II and their transportation to concentration camps from which many never returned. Whole families in Poland were wiped out, so that in many cases the only heirs were relatives in the United States or survivors who came to the United States and had become United States nationals by January 1, 1956.

Evidence establishing loss of property as German-owned or abandoned.—In general, evidence that property was within the purview of Article 34 of the Decree of March 8, 1946 and that claimant, as the rightful owner by inheritance or otherwise, had never recovered it or sought restitution, was deemed a sufficient basis for a finding by the Commission that the property was taken under Article 34 as of January 1, 1956. (*Claim of David Sturm*, Claim No. PO-1375, Dec. No. PO-781, 17 FCSC Semiann. Rep. 51 (July-Dec. 1962).) Where a claimant's postwar application for restitution of property was granted, but he left Poland without ever obtaining actual possession of the property, the Commission found that it had been taken as abandoned property on January 1, 1956 and granted an award. (*Claim of Mark Berkowitz*, Claim No. PO-1765, Dec. No. PO-1114, 18 FCSC Semiann. Rep. 20 (Jan.-June 1963).) However, a loss of property on January 1, 1956 was not presumed where there was evidence of a specific taking thereof on a different date. In a claim involving two parcels of property coming within the purview of Article 34 of the Decree of March 8, 1946, which the record revealed had been taken on December 31, 1957 and December 28, 1959 under decisions of those dates by the County Court of Lubaczow, the Commission found that the loss occurred on the dates of the court's decisions. (*Claim of Abraham Miller*, Claim No. PO-6573, Dec. No. PO-7350.)

Property which was taken by the Polish Government under

Article 2 as formerly German-owned, passed into State ownership by operation of law. Thus, where a claimant's property in Wroclaw, Poland (formerly Breslau, Germany), was found to have been within the purview of Article 2, the Commission held, in the absence of evidence to the contrary, that it had been taken on April 19, 1946, the effective date of the Decree of March 8, 1946. (*Claim of Frieda Weiss*, Claim No. PO-5597, Dec. No. PO-783, 17 FCSC Semiann. Rep. 55 (July-Dec. 1962).)

On the basis of a similar holding, the *Weisman* claim was denied by Proposed Decision because the claimants did not become nationals of the United States until July 24, 1947. After oral hearing and independent investigation, the Commission found in an Amended Proposed Decision that the property had been taken by the German Government from claimant's predecessors-in-interest in 1939 under anti-Jewish discriminatory measures, and subsequently taken by the Government of Poland purportedly pursuant to Article 2, effective April 19, 1946, as German-owned. The Commission held the German measures to have been invalid and ineffective to divest claimants' predecessors-in-interest of their interest in the property (see annotations to *Claim of Herbert Brower*, appearing at page 483); and found that claimants inherited interests in the property upon the death of their predecessors-in-interest during World War II. Finding further, in conformity with the view of Polish courts in such cases, that Article 2 of the Decree of March 8, 1946 did not encompass property which had been taken unlawfully by the German Government from persecutees, the Commission concluded that the property had not been taken under Article 2, but had in fact been taken under Article 34 of the Decree of March 8, 1946, as of January 1, 1956, entitling claimants to awards. In the same manner awards were made to many American heirs of persecuted families who would not have qualified as nationals of the United States if the loss were found truly to have occurred on April 19, 1946 when property rightly included in Article 2 was taken.

Taking of property under agrarian reform laws.—Many claims in the Polish program were based upon property which had been taken by the Polish Government in the course of agrarian reform. World War II was not over and the greater part of present-day Poland was still under German occupation when the Polish National Liberation Committee in Lublin issued the Decree of September 6, 1944 (*Dz. U. 1944, No. 4, it. 17*) on agrarian reform, providing that agrarian property specified in Section 2 should be transferred immediately to the State. This Decree was amended by the Decree of January 17, 1945 (*Dz. U. 1945, No. 3, it. 9*), and on January 19, 1945 a unified text of the two decrees was issued (*Dz. U. 1945, No. 3, it. 13*). In cases where the evidence indicated that real property was taken by the Government of Poland pursuant to the Decree of September 6, 1944, the Commission held that, in the absence of evidence to the contrary, the land was effectively taken on January 19, 1945, the date when the unified text of the Decree was published. (*Claim of Irene Czarowicz*, Claim No. PO-10183, Dec. No. PO-5116, 21 FCSC Semiann. Rep. 31 (July-Dec. 1964).) In like manner, where improved real property located in the market place of the town of Raczki was within

the purview of the Law of March 12, 1958 (*Dz. U. 1958, No. 17, it. 71*) relating to the sale of State-owned farmland and concerning the regulation of certain matters connected with the implementation of agrarian reform, the Commission held that, in the absence of evidence to the contrary, the real property was taken on April 5, 1958, the effective date of the law. (*Claim of Irwin I. Berwald*, Claim No. PO-4248, Dec. No. PO-3535.)

Article 17 of the Decree of September 6, 1944 provided that former owners or co-owners of property taken under that Decree had a right to receive in another county an independent farm of comparable arable land in partial compensation for the taking. Article 12 defined independent farms as comprising up to five hectares of land. This compensatory right was abrogated and declared null and void by Article 12 of the Law of March 12, 1958. In the *Claim of Irene Czarowicz, supra*, where the Commission found that claimant's interest in a large estate in Rusinowo, Poland, was taken on January 19, 1945 under the Decree of September 6, 1944, the Commission held this loss to be not compensable because claimant was not a United States national at the time, not having become such until November 11, 1954. However, the Commission found further that claimant had acquired a right under the Decree of September 6, 1944 to receive five hectares of farmland, and that this right had been annulled on April 5, 1958, the effective date of the Law of March 12, 1958. Since this loss occurred when claimant was a national of the United States, she was granted an award in the principal amount of \$1,450.00, representing the value of five hectares of farmland. The Commission thus implicitly held that the right to receive substitute land in partial compensation for the taking of landed estates under the agrarian reform statute was a substantive "right and interest in and with respect to property" within the meaning of Article 2(a) of the Polish Claims Agreement of 1960; and that the abrogation of such right constituted a taking of property within the meaning of the Agreement, rendering the claim compensable.

Another application of the Law of March 12, 1958 involved 172.27 hectares of inundated land against which expropriation proceedings had been commenced by the Polish Government before World War II in connection with the construction of a large hydroelectric project. The Law contained a provision that real property administered by the State against which expropriation proceedings had been initiated prior to September 1, 1939 and had not been completed, should become the property of the State by force of law. The Commission held that the property was taken on April 5, 1958, the effective date of the Law. (*Claim of Olgierd Langer*, Claim No. PO-6910, Dec. No. PO-5798.)

Other takings of property.—The Decree of April 7, 1948 (*Dz. U. 1948, No. 20, it. 138*) permitted the appropriation of real property which had been used for public purposes from September 1, 1939 to May 9, 1945 and which was in the possession of Polish authorities on the effective date of the Decree. The Decree required that an application be made to the appropriate authority and if granted, that the property be deemed to have been expropriated as of May 9, 1945. Where the State Office of Public

Security in Kielce applied for the expropriation of a claimant's real property under this Decree and the Presidium of the County National Council in Kielce granted the application by Decision dated February 24, 1951, the Commission held that the property was taken by the Government of Poland without compensation on February 24, 1951, the date of the decision issued by the Presidium, and not on the retroactive date of May 9, 1945. (*Claim of Janina A. Schap, et al.*, Claim No. PO-2161, Dec. No. PO-2370, 20 FCSC Semiann. Rep. 14 (Jan.-June 1964).)

Under the terms of a Decree of July 27, 1949 (*Dz. U. 1949, No. 46, it. 339*), concerning the taking by the State of real property in certain counties of the Bialystok, Lublin, Rzeszow, and Krakow voivodeships, not in the actual management of its owners, property was taken on the effective date of a subsequent decision of the Presidium of the County National Council affecting the property. Thus the Commission found that a claimant's property in Stefkowa, Poland, had been taken on March 19, 1956, the date of the decision of the Presidium as to the property, issued under the authority of the Decree of July 27, 1949. (*Claim of John Hedio Proach*, appearing at page 550.)

Provision for the nationalization of pharmacies in Poland was made in Article 2 of the Decree of January 8, 1951 (*Dz. U. 1951, No. 1, it. 1*). A pharmacy in Krakow, Poland, was found by the Commission to have been taken on January 9, 1951 by Decision of the Presidium of the Municipal National Council of Krakow issued pursuant to the Decree of January 8, 1951. (*Claim of Leo H. Sternbach*, Claim No. PO-1934, Dec. No. PO-3706, 20 FCSC Semiann. Rep. 32 (Jan.-June 1964).)

Occasionally claimant's property was taken by individual action of governmental authorities without reference to any statutory provision authorizing the same. In a case of this sort the Commission held that claimant's land, house and 100 fruit trees in Andrychow were taken by the Government of Poland on May 29, 1953 pursuant to the Order of the National Voivodeship Council at Krakow. (*Claim of Isidor Krumholz*, Claim No. PO-2636, Dec. No. PO-782, 17 FCSC Semiann. Rep. 54 (July-Dec. 1962).)

Taking of real property in Warsaw.—The Decree of October 26, 1945 (*Dz. U. 1945, No. 50, it. 279*) had particular reference to property in Warsaw, Poland. Under this decree, land in Warsaw was taken into State ownership on November 21, 1945. In claims involving unimproved land in Warsaw, claimants were not required to secure evidence of the application of this decree to their specific property. Establishing United States nationality on or before November 21, 1945, and ownership on that date of a particular parcel of land in Warsaw, with evidence as to size and location from which value might be determined, was sufficient for the granting of an award. In this manner, where claimant established by official Polish documentation that he owned a $\frac{3}{16}$ interest in real property at 22 Zurawia Street in Warsaw, the improvements of which had been destroyed during the war leaving only the land, the Commission found that the land was within the purview of the Decree of October 26, 1945, and that, in the absence of evidence to the contrary, it was taken by the Government of Poland on November 21, 1945. Claimant having

been a United States national since March 21, 1944, an award was made for the value of his $\frac{3}{16}$ interest. (*Claim of Stefan Grapnel*, Claim No. PO-7169, Dec. No. PO-8738.)

Where improvements existed on land in Warsaw, and sometimes even in the absence of improvements, as the Government decided what was to be done with a parcel of property in the course of rebuilding the city, it published a notice of intention to take possession. Under the Decree of October 26, 1945, the owners then had a period of six months within which to file a petition for temporary ownership which, if granted, enabled them to build or rebuild, or continue in the use of existing structures. If the petition was denied, the property was taken at that time. If no petition was filed, the property was taken at the expiration of the six-month filing period. In a claim involving real property at 62 Targowa Street, Warsaw, a notice of intention to take possession was published on April 19, 1948. No petition for temporary ownership having been filed thereafter, the Commission held that the property was taken on October 19, 1948, six months after the date of the notice, pursuant to the Decree of October 26, 1945. Inasmuch as claimant did not become a United States national until November 21, 1952, the claim was denied. (*Claim of Dale Alwin*, Claim No. PO-5489, Dec. No. PO-966.)

However, where the record revealed some subsequent action by the Polish Government taking property, the date of such action was deemed to be the date of loss, as in the case of a decision of the Warsaw Presidium dated April 4, 1950 (*Claim of Joe Traler*, Claim No. PO-2301, Dec. No. PO-956, 18 FCSC Semiann. Rep. 20 (Jan.-June 1963)), or a motion by the Warsaw County Court on September 8, 1955 to record title in the State Treasury. (*Claim of Lea Habergrutz, et al.*, Claim No. PO-3374, Dec. No. PO-766.) In its decision in *Claim of Stefan Grapnel, supra*, in which it held that a building lot had been taken on November 21, 1945 under the Decree of October 26, 1945, the Commission also held that two improved parcels had been taken on March 30, 1950 and February 14, 1952, the dates of decisions of the Warsaw Presidium issued pursuant to the same decree.

Taking of industrial property.—Industrial concerns in Poland were nationalized under the Law of January 3, 1946 (*Dz. U. 1946, No. 3, it. 17*). Article 2 provided for the confiscation of industrial, mining, communications, banking, insurance and commercial enterprises owned by the German Reich or the former Free City of Gdansk, German individuals, or corporations. Article 3 provided for the nationalization of 17 classes of enterprises owned by others than those mentioned in Article 2. Enterprises nationalized under Article 3 were to pass into State ownership on the date of publication by administrative officials of the nationalization thereof. Accordingly, where notice of the nationalization of *Stowarzyszenie Mechaników Polskich z Ameryki*, a Polish corporation in which claimant owned nine shares of stock, was published in *Monitor Polski* on September 5, 1947, the Commission held that the enterprise was nationalized on that date. (*Claim of John Szczepniak*, Claim No. PO 9599, Dec. No. PO-1777.)

From the language of Article 2 of the Law of January 3, 1946

it appeared that the confiscation of German-owned enterprises would be effective on the date of publication of the Law itself. In practice, however, Articles 2 and 3 were administered in the same way, with subsequent case-by-case decisions as to which enterprises were taken under which Article. The Commission therefore held, in a claim involving the taking of two corporations under Article 2 as German-owned property, that the date of loss was September 23, 1946, when the announcement of the nationalization of the two corporations was published in *Monitor Polski*. In this instance the claimants urged a finding that the true date of taking was October 10, 1947 when the Supreme Commission for Nationalization of Enterprises denied their appeal against the taking under Article 2. The Commission held, however, that the denial of the appeal was a confirmation of the original action of nationalization which occurred on September 23, 1946. (*Claim of William Petschek, et al.*, Claim No. PO-7093, Dec. No. PO-9323.)

Under certain conditions the nationalization of a business enterprise also included the taking of property owned by others than the nationalized corporation. In one instance a portion of claimant's building was occupied by the enterprise *Zakłady Graficzne Jozef Gozdziejewski* which was nationalized by the Government of Poland pursuant to Article 3 of the Law of January 3, 1946. The notice regarding the nationalization of the enterprise was published in *Monitor Polski* on December 10, 1949. The Polish authorities declared that claimant's building was an essential part of the nationalized enterprise and, as such, the building was taken also. The Commission concluded that claimant's property was taken on December 10, 1949. (*Claim of Robert Sieburth*, Claim No. PO-8370, Dec. No. PO-3034.)

In any claim based upon a stock interest in a corporation, compensability depended upon a nationalization of the corporation or its assets. The Polish American Navigation Corporation was incorporated on April 29, 1919, but went out of existence, having become inoperative and void as of April 1, 1930, and so proclaimed by the Governor of the State of Delaware on January 1, 1931 for nonpayment of taxes. The Ursus Motor Company, incorporated on November 1, 1918, was involuntarily dissolved in the Superior Court of Cook County, Illinois, on February 16, 1927. Where the record in a claim contained no evidence that either corporation owned any property in Poland or that the Government of Poland nationalized or otherwise took any assets of the corporations, the claim was denied by the Commission for claimant's failure to establish that the loss complained of was the result of any action for which the Government of Poland was responsible under the Polish Claims Agreement of 1960. (*Claim of Jan Zolniewrowski*, Claim No. PO-3038, Dec. No. PO-786, 17 FCSC Semiann. Rep. 56 (July-Dec. 1962).)

JAN GLOWACKI

Against the Government of Poland

Governmental restrictions precluding free and unrestricted use of rented real property constituted "loss of use or enjoyment of property" under Article 2(b) of Polish Claims Agreement of 1960 and Section 4(a), Title I of the 1949 Act, although title remained recorded in claimant's name. Use and enjoyment of rented real property was lost pursuant to Law of January 30, 1959 on February 12, 1959, the effective date of law, in absence of evidence to the contrary.

PROPOSED DECISION

This claim, for the amount of \$25,000.00, is based upon ownership and loss of the improved real property at 16 Kujawska Street in Wloclawek, voivodeship Bydgoszcz, Poland. Claimant, JAN GLOWACKI, has been a national of the United States since his birth in the United States on August 29, 1904.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended, (64 Stat. 12 (1950), 22 U.S.C. § 1623 (1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Polish Claims Agreement of 1960 (*Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States*, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960)). Article 2 of that Agreement provides as follows:

Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States for

- (a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property;
- (b) the appropriation or the loss of use or enjoyment of property under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property . . .; and
- (c) debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland.

The Agreement further defines "claims of nationals of the United States" as including

rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropria-

tion or other taking to . . . [July 16, 1960], have been continuously owned . . . (a) directly by natural persons who were nationals of the United States. . . . (*Polish Claims Agreement of 1960, supra*, at Annex, Paragraph A. See also 14 *FCSC Semiann. Rep.* 186 (Jan.-June 1960).)

A certificate, issued by the County Court for the City of Wloclawek on October 17, 1961, shows that title to the property, a rented apartment house, at 16 Kujawska Street, recorded in land register liber 2324 of Wloclawek as lot No. 998, voivodeship Bydgoszcz, Poland, is still in claimant's name. There is nothing in the record to establish that the property has been nationalized by the Government of Poland. Consequently, it must be determined whether or not the use or enjoyment of the property was appropriated or lost under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property. (*Polish Claims Agreement of 1960, supra*, Article 2(b).)

A study of the pertinent Polish statutes and governmental actions shows the facts as follows:

World War II was not yet over when the provisional government of Poland first regulated the relationship between landlord and tenant. Rents were frozen at the level of September 1, 1939, housing commissions were established to control the occupation of available dwelling space, permit the increase of rent in proportion to the investment made by the owner, and regulate other matters of housing. This regulation by the provisional government was replaced by a more comprehensive statute on distribution of dwelling space and rent control, dated December 21, 1945.

Under this decree the owner had no right to select his tenant. Apartments, as well as office space, could be occupied only pursuant to an assignment issued by the Housing Authority. The Housing Authority was empowered to order the partitioning of an apartment larger than three rooms into two or more separate apartments; if the owner failed to comply with such order within a specified period of time, the Housing Authority performed the remodeling at the owner's expense and placed a mortgage upon the property to secure the repayment of the cost expended.

Effective as of September 1, 1948, the monthly rent was increased to 80-120 zlotys per sq. meter of dwelling space. The new, increased rent, however, did not apply and the rent remained as it was on September 1, 1939, if the tenant was a state or municipal employee, person working for wages, scientist, educator, artist, writer, journalist, pensioner living on government

or municipal retirement, social security or public welfare, or was unemployed.

The new regulations allowing an increase in rents, however, afforded no real benefit to the owner because of provisions which compelled him to contribute a substantial portion of his income to the Housing Control Fund, invest a certain percentage in maintenance and repairs of his premises and of course the payment of a real property tax. After meeting his obligations in this respect the owner was left with a very small percentage of the rental income.

Some of the Polish statutes affecting the rights of owners of improved real property appear to have been temporary measures to guide the country through a period of readjustment following World War II. Others were more permanent in nature. The statutes were amended time and again. The incidents of ownership of property in Poland were not lost abruptly as was the case in Czechoslovakia. Rather, there was a series of statutes enacted over a long period of time, each one attempting to cover a new area or reinforcing an old one. Accordingly, it cannot be said with any degree of certainty that there was a loss of use or enjoyment of property in Poland at one particular time. And yet the restrictions imposed upon the owners of rental apartment houses constituted a gradual but nonetheless a complete destruction of the incidents of ownership.

In view of these circumstances, the Commission concludes that the Law of January 30, 1959 (*Dz. U. 1959, No. 10, it. 59*) appears to represent the culmination of many years of effort to control initially, and ultimately to appropriate, certain rented premises. By that time all effective measures in these respects with few, if any, exceptions had been put into effect. Consequently, in the absence of evidence to the contrary, it is found that the loss of use and enjoyment of the improved real property at 16 Kujawska Street in Wloclawek, which was a rental premises within the purview of the Law of January 30, 1959, occurred on February 12, 1959, the effective date of the law.

On the basis of evidence of record, namely the appraisal made by Lucian Jezierski, an architect and resident of Wloclawek, a photograph, and information furnished by the claimant concerning the cost of construction and the pre-World War II market value of the property, the Commission finds that on February 12, 1959, the date of loss, the property at 16 Kujawska Street had a value of \$2,600. The Commission concludes that claimant is entitled to compensation under the Polish Claims Agreement of 1960.

The Commission has decided that in granting awards on

claims under the Polish Claims Agreement of 1960, interest shall be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the effective date of the Agreement. (See the *Claim of John Hedio Proach*, Claim No. PO-3197, Dec. No. PO-652, 17 FCSC Semiann. Rep. 47 (July-Dec. 1962).) Accordingly, the amount of the award will be increased to that extent.

AWARD

An award is hereby made to JAN GLOWACKI in the principal amount of Two Thousand Six Hundred Dollars (\$2,600.00), with interest thereon at 6% per annum from February 12, 1959 to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Two Hundred Twenty-two Dollars and Seventy-four Cents (\$222.74).

Dated at Washington, D.C.
October 2, 1963.

Loss of use or enjoyment of property.—The *Glowacki* decision illustrates the most common application of the provisions of Article 2(b) of the Polish Claims Agreement of 1960 concerning the loss of use or enjoyment of property, as distinguished from the nationalization or other taking of property under Article 2(a). This is its application to rental property, which was subjected to stringent postwar controls in Poland. As shown in previous decisions, Poland nationalized property by direct legislation, depriving the owners of title as well as use and enjoyment, in the same manner as other socialist countries. In addition, as in the case of Czechoslovakia, it deprived owners of the use and enjoyment of their property while leaving title undisturbed, through laws directed against rental property. Whereas in Czechoslovakia the incidents of ownership as to rental property were lost abruptly on January 1, 1953 under Law 80/52 Sb. (see annotations to *Claim of Mary Dayton, et al.*, appearing at page 420), the process in Poland was gradual and cumulative; and the Commission concluded that the date of loss in such cases in Poland was February 12, 1959, the effective date of the Law of January 30, 1959 (*Dz. U. 1959, No. 10, it. 59*) which culminated a series of statutes governing the relationship of landlord and tenant.

Release of claim against Poland.—Under paragraph C of Article 5 of the Agreement, the Government of the United States agreed to furnish to the Government of Poland a release signed

by the claimant in each valid claim not based upon documents of title pertaining to the property nationalized or taken. In claims such as *Glowacki*, where an award was based upon the loss of use or enjoyment of property to which title remained in claimant, the Commission required the execution of a document relinquishing all rights with respect to the property before certifying the award to the Secretary of the Treasury for payment.

Evidence to establish loss of use or enjoyment of property.—As in the case of Czechoslovakia, the Commission did not require a claimant to establish that the laws governing rental property were applied to his specific property. Just as ownership of property in Czechoslovakia of a type coming within the purview of Law 80 52 Sb. was a sufficient basis for a finding of constructive taking of that property on January 1, 1953 in the Czechoslovakian program, so ownership of property in Poland of a type coming within the purview of the Law of January 30, 1959 was deemed a sufficient basis for a finding that the use and enjoyment of such property had been lost on February 12, 1959. (*Claim of Charles Gunther Rutkowski*, Claim No. PO-4189, Dec. No. PO-2873.) Even where a summer estate in Puszczykowo, Poland, had not previously been used as a rental property, the Commission found that claimant lost the use and enjoyment thereof on February 12, 1959 under the Law of January 30, 1959, where the evidence established that the property had been occupied by tenants who had been selected by Government authorities and over whom claimant exercised no control, and from whom no income accrued to claimant. (*Claim of Joseph C. Gidynski, et al.*, Claim No. PO-9817, Dec. No. PO-5237, 21 FCSC Semiann. Rep. 34 (July-Dec. 1964).)

Naturally, a claimant whose property had been nationalized previously and title thereto transferred to the State, could not lose the use or enjoyment of that property on February 12, 1959. However, it was quite possible to find that a claimant lost the use and enjoyment of his property on February 12, 1959 or earlier, even though it subsequently was nationalized. This provided the basis for an award where a claimant who had been a national of the United States since 1923 owned property which was taken on October 5, 1961 by a Presidium decision issued under the authority of the Decree of July 27, 1949. Under that decree, property was taken on the date of the decision of the Presidium affecting the property. A loss occurring after July 16, 1960, the date of the Polish Claims Agreement of 1960, is not compensable under the Agreement. The Commission found, however, that claimant had lost the use and enjoyment of the property on September 1, 1947, and granted an award. (*Claim of Michael Shaw*, Claim No. PO-10824, Dec. No. PO-946, 19 FCSC Semiann. Rep. 17 (July-Dec. 1963).) That decision also reveals that the use and enjoyment of property could be lost within the meaning of Article 2(b) of the Agreement by means other than the application of the laws concerning rental property. Claimant's brother-in-law, who had been authorized by claimant to use the property, was forcibly evicted therefrom by Polish authorities on September 1, 1947, leaving claimant no control over or benefit from the property, and depriving him of all incidents of

ownership save record title which remained in his name until October 5, 1961. The Commission held that claimant had lost the use and enjoyment of the property on September 1, 1947.

Loss of use or enjoyment of property prior to February 12, 1959.—A claim based upon real property owned by claimant and recorded in her name, and occupied with claimant's permission by another person who acknowledged claimant's ownership, was denied. The property had not been nationalized or otherwise taken by the Government of Poland, and there were no circumstances which could be found by the Commission to constitute a loss of use or enjoyment within the scope of the Agreement. (*Claim of Vera Nehrebicki*, Claim No. PO-2891, Dec. No. PO-855.)

In the Matter of the Claim of

Claim No. PO-1004
Decision No. PO-1

IGNATIUS A. PIETRZAK

Against the Government of Poland

Claims based on unpaid dollar bonds of Poland denied under Polish Claims Agreement of 1960 and Title I of the 1949 Act because nonpayment of an obligation did not constitute a taking of property in absence of annulment or repudiation.

PROPOSED DECISION

This claim is based upon the asserted ownership by the claimant, IGNATIUS A. PIETRZAK, of a Republic of Poland Twenty Year 6% U.S. Dollar Gold Bond of 1920, in the face amount of \$50.00, issued in the United States and now in default as to both principal and interest.

Under Section 4(a) of Title I of the International Claims Settlement Act of 1949, as amended, the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Polish Claims Agreement of 1960, Article 2 of which provides:

Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States for

- (a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property;
- (b) the appropriation or the loss of use or enjoyment of property under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property . . . ; and

- (c) debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland.

If an award is to be made on a claim filed under the Agreement, the Commission must find that the claim is of such nature as to come within the purview of the above-quoted Article.

In the instant claim, it is not alleged that the claimant's bond has been taken from him or repudiated by the Government of Poland. Such bonds have not, in fact, been confiscated or annulled by the Polish Government, which continues to recognize the existence of its obligation. The claimant's grievance is the non-fulfillment by the Government of Poland of the contractual obligation expressed in the bond.

Mere nonpayment of an obligation of this nature does not constitute a nationalization or other taking of property. The purchase of a bond gives rise to a debtor-creditor relationship between the issuer of the bond and the purchaser. The money with which a bond is purchased is no longer the property of the purchaser. In exchange therefor, he receives a right to payment as expressed in the terms of the bond obligation. Nonpayment of the obligation cannot be regarded as a taking of the purchase money, which was voluntarily given in the first instance. While the bond itself may be regarded as property, it has not been taken from the claimant. Although it may be argued that the right to payment is a form of property, the claimant's property in this sense has not been taken from him in the absence of a repudiation or cancellation of the obligation by the Government of Poland. Such has not occurred.

Applying the language of Article 2 of the Agreement to this factual situation, it is found that mere nonpayment of the obligation expressed in the bond does not constitute a nationalization or other taking by the Government of Poland of property or of rights and interests in and with respect to property, or the appropriation or the loss of use or enjoyment of property under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property. The debt which is represented by the bond is one of the Government of Poland itself, and not a debt owed by a nationalized enterprise; nor is it a debt which was a charge upon nationalized property. Accordingly, by the standards expressed in Article 2 of the Polish Claims Agreement of 1960, a claim based upon nonpayment of a dollar bond issued by or guaranteed by the Government of Poland is not one settled and discharged by the Agreement.

Any possible question as to whether such bonds were intended by the drafters to be covered by the Agreement was removed by an exchange of letters between the two governments on the date of signing the Agreement. In this exchange, the Polish Minister Plenipotentiary wrote, "In connection with the interest expressed by the Government of the United States of America in the settlement of outstanding dollar bonds, issued or guaranteed by the Polish Government in the United States during the period 1919 to 1939, I have the honor to inform you that the Polish Government confirms its intention to settle the problem of this bonded indebtedness by direct talks with American bondholders or their representatives." Since the settlement of these dollar bond claims was reserved as the subject of future talks, the bond claims obviously were not among those "settled and discharged" by the Agreement.

Inasmuch as nonpayment of dollar bonds issued or guaranteed by the Government of Poland does not give rise to a compensable claim under the Polish Claims Agreement of 1960, this claim, being based solely upon ownership of such a bond, is hereby denied.

Dated at Washington, D.C.

February 27, 1961.

Debt claims.—Article 2(c) of the Polish Claims Agreement of 1960 makes specific provision for the settlement of claims of United States nationals based upon "debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland."

Under the terms of a five-year agreement, a claimant furnished information and assistance to enable a corporation to manufacture automobile tires and tubes in Poland, in consideration of fees to be paid at the rate of \$2,000.00 per quarter. After the expiration of the agreement the corporation was nationalized on July 4, 1947, at which time a total of \$16,000.00 had been paid to claimant, leaving an outstanding indebtedness of \$24,000.00. An award in this principal amount was made to claimant under Article 2(c) as a debt owed by a nationalized enterprise. (*Claim of Seiberling Rubber Company*, Claim No. PO-7839, Dec. No. PO-7830.)

A portion of a claim based upon an unpaid promissory note was denied as a simple private debt, the debtor not being an enterprise nationalized by the Government of Poland, and the debt not being a charge upon property which was nationalized or otherwise taken. (*Claim of Theodore Hanske, et al.*, Claim

Nos. PO-1242 and PO-2016, Dec. No. PO-7171, 22 FCSC Semiann. Rep. 33 (Jan.-June 1965).)

Secured debts.—Claims found compensable as based upon debts which were a charge upon nationalized property generally were those based upon mortgages secured by real property. One claim is of particular interest as representing the position of both the mortgagor and the mortgagee. The two claimants were a mother and son. The mother was the owner of two houses in Miedzianka, Poland, which were taken by the Government of Poland on April 19, 1946, at which time their total value was determined to be \$14,000.00. However, the houses were encumbered by a mortgage of 7,000 reichsmarks in favor of the son. The son was held to be entitled to an award under Article 2(c) of the Agreement as the owner of a debt secured by nationalized property. The amount of his award was the monetary value of the mortgage on April 19, 1946, when the security was taken. Reichsmarks had ceased to be legal tender in the area of Miedzianka on November 27, 1945, when they were converted into zlotys at the rate of two reichsmarks for one zloty. The mortgage then became payable in the amount of 3,500 zlotys which, on April 19, 1946, had a value of \$8.24. Thus the award to the son was in the principal amount of \$8.24; and that amount was deducted from \$14,000.00 to determine the value of the mother's equity in the houses at the time of loss, giving her an award, as the owner of nationalized property, in the principal amount of \$13,991.76. (*Claim of Elfriede Raupach Ullrich, et al.*, Claim No. PO-3648, Dec. No. PO-1614, 19 FCSC Semiann. Rep. 23 (July-Dec. 1963).)

Where a debt to claimant in the amount of 3,125 zlotys, at a guaranteed rate of exchange of \$1.00 to 5.18 zlotys, was a charge upon real property that was taken by the Government of Poland on January 19, 1945, the award to claimant as mortgagee was in the amount of \$600.00, the Commission applying the rate of exchange which had been guaranteed by the obligor in the agreement, and not the prevailing rate at the time of loss which would have been much less favorable to claimant. (*Claim of Bernard Sobotta*, Claim No. PO-6301, Dec. No. PO-2808, 20 FCSC Semiann. Rep. 16 (Jan.-June 1964).)

Where a "guarantee mortgage" of 4,000 gold zlotys was recorded in claimant's favor on property in Kruszwica Miasto, Poland, for credits to be granted by claimant to the mortgagors, the Commission held that a "guarantee mortgage" does not create a presumption of indebtedness and that a creditor enforcing a claim based upon such a mortgage must prove the existence of the obligation. Claimant failed to establish that the "guarantee mortgage" was a security for an actual indebtedness, and the claim was denied. (*Claim of Stefania Grzeszkowiak*, Claim No. PO-3083, Dec. No. PO-6474, 22 FCSC Semiann. Rep. 32 (Jan.-June 1965).) Likewise, in denying a claim based upon a "security mortgage" in the amount of 150,000 reichsmarks, the recording of which had not been established, the Commission held that even assuming that the "security mortgage" had been recorded, such a mortgage, the nature of which is to secure priority for future entries in the land register of individual claims, would

not, in the absence of such additional entries, provide a basis for an award. (*Claim of Ethelee Carlson, et al.*, Claim No. PO-6168, Dec. No. PO-9001, 24 FCSC Semiann. Rep. 48 (Jan.-June 1966).)

In another claim based upon a debt which assertedly was a charge upon nationalized property, claimant owned bonds issued by a German corporation and secured by the corporation's real property in Germany. As a result of boundary changes at the end of World War II, some of this real property came under Polish jurisdiction. The German corporation was not nationalized, and the Commission found that a substantial portion of the property securing the bonds was still in Germany, beyond the reach of Polish nationalization. In addition, the bonds were of an issue which was the subject of validation proceedings in Germany, looking toward payment thereof. The Commission denied the claim, since claimant had been unable to establish that he suffered any loss as a result of action by the Government of Poland within the scope of the Agreement. (*Claim of Arthur L. Little*, Claim No. PO-10437, Dec. No. PO-5003.)

Bank accounts.—By a series of decrees effective November 12, 1948 (*Dz. U. 1948, No. 52, it. 410, 411, 412*), the Government of Poland ordered the liquidation of banking enterprises. Article 28 of Decree No. 412 provided for the transfer of assets and liabilities of the liquidated banks to other designated government-owned banking institutions. Claims based upon accounts in banks thus liquidated were the subject of awards, as where a claimant had 3,857.10 zlotys on deposit with the *Komunalna Kasa Oszczednosci Miasta Grudziadz* on January 1, 1950 when the liquidation of that bank occurred. The Commission held that the liquidation was for all intents and purposes a nationalization of the bank, and made an award under Article 2(c) of the Agreement for the dollar value of the account at that time, as a debt of a nationalized enterprise. (*Claim of Aniela Bigot*, Claim No. PO-2939, Dec. No. PO-3056, 20 FCSC Semiann. Rep. 21 (Jan.-June 1964).) In another claim, the account was in the *Pocztowa Kasa Oszczednosci* which also was liquidated on January 1, 1950, but which had been owned by the Government of Poland before that time. Since the government could not be held to have nationalized its own property, the Commission in this instance found that the liquidation of the bank resulted, in effect, in a taking by the Government of Poland of claimant's right and interest in and with respect to property, entitling claimant to an award under Article 2(a) of the Agreement. (*Claim of Ludwik Wysocki*, Claim No. PO-3376, Dec. No. PO-3967.)

Obligations of Government of Poland.—The *Pietrzak* claim introduces the subject of debts owed by the Government of Poland. The claim was based upon ownership of a Polish Government dollar bond which was in default. It was denied as not coming within the scope of Article 2 of the Polish Claims Agreement of 1960. The Commission held that mere nonpayment of an obligation does not constitute a nationalization or other taking of property by the Government of Poland (Article 2(a)), or an appropriation or loss of use or enjoyment of property under Polish laws, decrees or other measures limiting and restricting rights and interests in and with respect to property (Article 2(b)). As

to Article 2(c), the debt was not one owed by a nationalized enterprise, nor one which was a charge upon nationalized property. Also, the Commission noted that in an exchange of letters between the contracting governments on the date of signing the Agreement, the Polish Government expressed its intention to settle certain dollar bonds, including those of the issue involved in this claim, and reserved the subject for future talks, clearly indicating that the parties had not intended to settle such bond claims by the Agreement. The Commission noted further that "Although it may be argued that the right to payment is a form of property, the claimant's property in this sense has not been taken from him in the absence of a repudiation or cancellation of the obligation by the Government of Poland. Such has not occurred." For instances of awards granted on claims based upon Polish Government indebtedness, where there had been governmental interference with the contract right, see *Claim of Sophia Predka*, appearing at page 531, and the annotations thereto.

A portion of a claim based upon defaulted Polish Government bonds expressed in zlotys was denied on the same ground. Although such bonds were not included in the exchange of letters between the two governments, the Commission held that they had not been nationalized, repudiated, or annulled, and hence were not within the purview of Article 2(a) of the Agreement; and did not fall within Article 2(c) because the indebtedness was neither owed by a nationalized enterprise nor a charge upon nationalized property. (*Claim of Zofia Walag*, Claim No. PO-2055, Dec. No. PO-3061, 20 FCSC Semiann. Rep. 22 (Jan.-June 1964).)

All claimed governmental indebtedness did not arise from bonds. A claim based upon the loss of a telephone exchange confiscated by the Polish army in 1919 was denied by Proposed Decision because claimant was not a United States national at the time of loss. Claimant objected, alleging that after he had become a United States national the Polish Government entered into a written agreement providing for the payment of a specific amount as compensation for the telephone exchange, and that payment had not been made. The Commission affirmed the denial of the claim in its Final Decision, finding that there was no evidence to establish the existence of the written agreement; and that even if it had existed, claimant's loss occurred when the telephone exchange was taken, and subsequent events had to do with efforts to obtain compensation for the loss suffered in the past. The Commission added that it would reach the same result if it ignored the earlier taking of property and regarded the *res* of the claim to be the Polish Government's failure to make the promised payment. The claim would be based upon a debt of the Polish Government, and not a debt owed by a nationalized enterprise or a charge upon nationalized property, as required for compensation under Article 2(c). (*Claim of Vlad Metchik*, Claim No. PO-1907, Dec. No. PO-314, 17 FCSC Semiann. Rep. 45 (July-Dec. 1962).)

Pensions.—A claim based upon pension payments awarded for accidental injuries suffered in 1922, and discontinued shortly before World War II, was denied. The payments had been made by the *Zaklad Ubezpieczen Spolecznych* (Bureau of Insurance) in Warsaw, an official agency of the Polish Government. The

Commission held that the debt was owed by the Polish Government, that nonpayment thereof did not constitute a nationalization or loss of use or enjoyment of property, and that the debt was not one of a nationalized enterprise or secured by nationalized property. (*Claim of Genevieve Trytek, as Administratrix of the Estate of Franciszek Trytek, Deceased*, Claim No. PO-8357, Dec. No. PO-5125, 22 FCSC Semiann. Rep. 35 (Jan.-June 1965).) Where payment of retirement benefits by a private enterprise in Poland was discontinued on September 1, 1939, and the enterprise was nationalized on June 21, 1947, the Commission granted an award for the payments due before nationalization of the company as a debt of a nationalized enterprise, but denied the portion of the claim based upon payments due thereafter as a debt of the Polish Government. (*Claim of Ludwig R. Thiel*, Claim No. PO-8169, Dec. No. PO-3786, 20 FCSC Semiann. Rep. 33 (Jan.-June 1964).)

In the Matter of the Claim of

Claim No. PO-1178
Decision No. PO-2491

SOPHIA PREDKA

Against the Government of Poland

Polish decree annulling bondholder's right to receive payment in foreign currency in accordance with bond contract constituted taking of property on effective date of decree under Article 2(a) of Polish Claims Agreement of 1960 and Section 4(a), Title I of the 1949 Act.

PROPOSED DECISION

This claim, for \$1,000.00 plus interest, is based upon ten bonds, bearing Nos. 006821-W-006830-W, issued by the Pocztaowa Kasa Oszczednosci in Warsaw, Poland (Postal Savings Bank), an agency of the Government of Poland. Claimant, SOPHIA PREDKA, has been a national of the United States since her naturalization on June 29, 1937.

Under the Polish Claims Agreement of 1960, claims by nationals of the United States for "(a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property . . ." are settled and discharged. (*Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States*, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960), Article II.)

The Agreement further defines "claims of nationals of the United States" as including

rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland

which, from the date of such nationalization, appropriation or other taking to . . . [July 16, 1960], have been continuously owned . . . (a) directly by natural persons who were nationals of the United States. . . . (*Polish Claims Agreement of 1960, supra*, at Annex, Paragraph A. See also 14 *FCSC Semiann. Rep.* 186 (Jan.-June 1961).)

It appears that in 1928 claimant purchased ten savings bonds, each in the face amount of 860 "gold" zlotys with attached interest coupons. The bond contract provided for 3% interest payable semiannually on May 1st and November 1st of each year until maturity of the principal obligation on November 1, 1942. At the exclusive option of the bondholder, payment was required to be made in "gold" zlotys, United States dollars or in any foreign currency existing where the bondholder resided.

The record shows that regular payments of interest were made through May 1, 1939. It is noted that World War II began in Europe upon the invasion of Poland on September 1, 1939. Apparently, the bond contract made no provision for any such contingency so that payments became due periodically after May 1, 1939 despite the fact of war. No payments on account of interest or principal were made after May 1939.

Clearly, the bondholder's option to receive payment in "gold" zlotys or other currency provided a standard of value for the very purpose of preserving the investment, a safeguard against unfavorable fluctuations of the zloty. Undoubtedly many such investments would not have been made but for this option, which appears to be unconditional. That this provision in the bond contract created a valuable property right cannot be disputed.

Not only did Poland fail to make any payment on account of these obligations after the cessation of hostilities, but it destroyed concomitant rights by the enactment of the Decree of July 27, 1949 (*Dz. U. of 1949, No. 45, it. 332*), effective August 6, 1949. Section 7 of that decree provides as follows:

In agreements concerning monetary obligations, all clauses stipulating that foreign currency or currencies alternative to Polish currency constitute a means of payment, are hereby declared to be null and void.

The amount due in respect to obligations subject to such clauses is exclusively defined by the sum expressed in Polish currency. (2 *The Legislation of Poland* 200 (1949).)

In effect Section 7 annulled claimant's right to receive payment in currency of the United States where she had been residing for many years. Moreover, it opened the door to the very hazards that the bond contract was designed to avoid. Hereafter, claimant could expect to be paid, if payment were ever made, in zlotys, a

much depreciated currency. In recognition of the fact that the zloty had depreciated, Poland enacted a monetary reform, effective October 30, 1950 (Law of October 28, 1950, *Dz. U. of 1950, No. 50, it. 459*; Decree of October 28, 1950, *Dz. U. of 1950, No. 50, it. 461*) under which claimant's bonds in the principal amount of 8,600 "gold" zlotys were reduced to 258 zlotys.

In the meantime there was a reorganization of banks in Poland (Decrees of October 25, 1948; *Dz. U. of 1948, No. 52, items 410, 411 and 412*), and the Postal Savings Bank in question went into liquidation as of January 1, 1950. Its accounts were liquidated by order of the Minister of Finance (December 19, 1949; *Dz. U. of 1949, No. 63, it. 508*), and claimant's bonds were regarded as accounts for the purpose of this order. By public notice of the liquidator (*Monitor Polski* of April 21, 1951, No. B-15), payment in reduced zlotys was offered during the period April 21, 1951 to May 5, 1952, in full satisfaction of the obligations. Had claimant elected to accept this offer, presumably she could have recovered the amount of 258 zlotys. This amount would have been equivalent to \$64.50 or a smaller sum, depending upon whether the official rate of 4 zlotys to \$1.00 or a less favorable rate were applied. However, to have done so would have required claimant to surrender the bonds and release Poland from its obligations.

The circumstances in this case are not fortuitous. They are the result of specific action taken by the Government of Poland. The record shows that claimant's bonds were treated like bank accounts for the purpose of the order of the Minister of Finance of December 19, 1949, *supra*, and that her rights under the bond contract were disregarded.

The Commission holds that Section 7 of the Decree of July 27, 1949 effected an annulment of claimant's right to receive payment in accordance with the terms of the bond contract, and that this annulment constituted a taking of property within the meaning of Article II (a) of the Polish Claims Agreement of 1960, as of August 6, 1949, when that Decree became effective.

Inasmuch as claimant has been a national of the United States since June 29, 1937, it is clear that her claim is within the purview of the Agreement. The only remaining question is the amount of her loss.

Under the terms of the bond contract, the exchange rate that was to be applied was the rate prevailing on the Warsaw Exchange on the day immediately preceding the date of payment. Since claimant's property was taken on August 6, 1949, the rate in effect on the Warsaw Exchange at that time would appear to be appropriate. However, the Warsaw Exchange never reopened

after World War II and no other such organization ever came into being.

Title I of the International Claims Settlement Act of 1949, as amended (64 Stat. 12 (1950)), which governs claims under the Polish Claims Agreement of 1960, provides as follows:

. . . In the decision of claims under this title, the Commission shall apply the following in the following order: (1) The provisions of the applicable agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity. (Section 4(a).)

The appropriate exchange rate to be applied in this case cannot be determined from the provisions of the Polish Claims Agreement of 1960. Resort must, therefore, be had to international law, justice and equity.

The currency in Poland depreciated considerably during and after World War II. If claimant's loss were measured in terms of such currency, her ten bonds would have little value. It would mean that the bond provisions intended to guard against fluctuations of the zloty have no effect. That such conclusion would be neither just nor equitable is beyond peradventure of doubt.

In view of the safeguards that the bond provided against fluctuations of the zloty, the Commission is of the opinion that justice and equity can be best served in this case by compensating claimant in the amount to which she was entitled pursuant to the original terms of the bond contract which amount the Commission finds to be the sum of \$1,065.50 for the ten bonds with the attached coupons.

The Commission has decided that in granting awards under the Polish Claims Agreement of 1960 interest shall be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the effective date of the Agreement. (See *Claim of John Hedio Proach*, Claim No. PO-3197, Dec. No. PO-652, 17 FCSC Semiann. Rep. 17 (July-Dec. 1962).) Accordingly, the amount of the award will be increased to that extent.

AWARD

An award is hereby made to SOPHIA PREDKA in the principal amount of One Thousand Sixty-Five Dollars and Fifty Cents (\$1,065.50) with interest thereon at 6% per annum from August 6, 1949 to July 16, 1960, the effective date of the Polish Claims

Agreement of 1960, in the sum of Six Hundred Ninety-Nine Dollars and Sixty-Eight Cents (\$699.68).

Dated at Washington, D.C.

February 12, 1964.

Annulment of contract rights.—The *Predka* decision illustrates a type of claim which, although stemming originally from an indebtedness of the Government of Poland and not within the scope of Article 2(c) of the Polish Claims Agreement of 1960, resulted in an award under Article 2(a). In view of the potential instability of the Polish zloty, in the light of earlier depreciation in value of the currencies which preceded the zloty, it was not uncommon for a creditor to seek to protect the value of his interest by the inclusion in the loan contract of a clause providing a standard of value. This frequently was accomplished by a so-called “gold clause” as in the *Predka* case, which fixed the value of the zloty, for the period of the contract, at its value in relation to gold at the time of entering into the contract. A simple contract calling for the repayment of 1,000 zlotys in ten years would be fulfilled by payment of 1,000 zlotys at the end of that time, though the sum might then have but a small fraction of the purchasing power of the original 1,000 zloty loan. With a gold clause, fulfillment of the contract would require repayment of such larger sum in zlotys as would purchase the same amount of gold as 1,000 zlotys would have purchased at the start of the period of the loan, thus protecting the lender from the risk of currency depreciation. Other standards were used as well. The value of the zloty might be tied to that of a commodity such as rye, or to the currency of another country considered more stable, such as United States dollars or Swiss francs. The Polish Decree of July 27, 1949 (*Dz. U. 1949, No. 45, it. 332*), effective August 6, 1949, annulled those provisions of the bond contract whose very purpose was to protect the bondholder from loss due to depreciation of the zloty. The Commission found that these contractual provisions had created a valuable property right which had been destroyed by the Polish Government, and held that the annulment of claimant’s right to be paid in accordance with the terms of the bond contract constituted a taking of property within the meaning of Article 2(a) of the Agreement.

On the same basis, an award was made under Article 2(a) in another claim for a loss suffered by claimant in connection with ownership of bonds issued by the Municipal Administration of the Capital City of Warsaw, containing a gold clause. A portion of the same claim, based upon bonds issued by the State Road Fund of the Municipal Administration of the Capital City of Warsaw, was denied. The Commission found that, contrary to

claimant's assertion, these bonds contained no gold clause. They had not been nationalized, repudiated or annulled by the Polish Government, and consequently were not within the purview of Article 2(a). They were not a debt of a nationalized enterprise or a charge upon nationalized property, and therefore were not covered by Article 2(c). In the absence of a gold clause or other provision protecting against currency fluctuation, they were not affected by the Decree of July 27, 1949. (*Claim of Warren Brothers Company*, Claim No. PO-5988, Dec. No. PO-9318, 23 FCSC Semiann. Rep. 71 (July-Dec. 1965).)

The same principle was applied, where appropriate, in cases where the debtor was not the Polish Government, but the loss was caused by the government's annulment of a valuable contract right. An award was granted in a claim based upon three life insurance policies which had paid-up values of \$1,296.25 and 8,699 "gold" zlotys, when the Government of Poland's Decree of July 27, 1949 effected an annulment of claimant's right to receive payment in accordance with the terms of his policies, thus removing his contractual protection against loss due to depreciation in the value of the zloty. (*Claim of Bernard Dworetzky*, Claim No. PO-2320, Dec. No. PO-3705, 20 FCSC Semiann. Rep. 30 (Jan.-June 1964).) The same decree had the same effect upon a claimant who owned an interest in a mortgage to the extent of 3,452.24 Swiss francs. Under the decree, the mortgage became payable in drastically depreciated zlotys rather than stable Swiss francs; and the annulment of claimant's right to receive payment in accordance with the terms of the contract was the basis for an award under Article 2(a) of the Agreement. (*Claim of Aniela Bigot*, Claim No. PO-2939, Dec. No. PO-3056, 20 FCSC Semiann. Rep. 21 (Jan.-June 1964).)

In the Matter of the Claim of

Claim No. PO-1388
Decision No. PO-952

ALOIS SZPUNAR

Against the Government of Poland

Although a nation has the sovereign right under international law to regulate its own currency, its failure to grant right to exchange "old" zlotys for its newly established currency constituted abuse of right and a taking of property under Polish Claims Agreement of 1960 and Title I of the 1949 Act.

Rate of exchange for Polish zloty in September 1945, 371.424 zlotys for \$1.00, determined by comparison of relative purchasing power of Polish zloty and American dollar in 1945.

Claim based on depreciation in value of currency is neither recognized under international law nor covered by Polish Claims Agreement of 1960.

PROPOSED DECISION

This claim, in the amount of \$7,375.00, is based upon the asserted loss of 29,500 zlotys, deposited with the Narodowy Bank Polski by ALOIS SZPUNAR, a national of the United States since his nationalization on June 30, 1916.

Under the Polish Claims Agreement of 1960, claims by nationals of the United States for “(a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property . . .” are settled and discharged. (*Agreement with the Government of the Polish People’s Republic Regarding Claims of Nationals of the United States*, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960), Article II.)

The Agreement further defines “claims of nationals of the United States” as including

rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropriation or other taking to . . . [July 16, 1960], have been continuously owned . . . (a) directly by natural persons who were nationals of the United States. . . . (*Polish Claims Agreement of 1960, supra*, at Annex, Paragraph A. See also 14 *FCSC Semiann. Rep.* 186 (Jan.-June 1961).)

At the close of World War II three currencies were in circulation within the present territory of Poland: German marks (reichsmarks and rentenmarks), zlotys issued by the Bank Emisyjny w Polsce, and rubles of the U.S.S.R. On August 31, 1944, the Polish National Committee of Liberation, the then provisional government of Poland, introduced a new zloty, having par value with the zloty of the Bank Emisyjny w Polsce and the ruble of the U.S.S.R. (Decree of August 24, 1944, *Dz. U. No. 3, it. 11*). Effective October 28, 1944, the German mark was withdrawn from circulation in the area of Bialystok. Each individual was permitted to exchange 300 German marks into zlotys at par; the rest of the mark banknotes held had to be deposited. The deadline for the exchange was November 20, 1944 (Decree of October 23, 1944, *Dz. U. No. 9, it. 43*).

In other parts of Poland the zloty banknotes of the Bank Emisyjny w Polsce and the German mark ceased to be legal tender on January 10 and February 28, 1945, respectively. Each individual was allowed to exchange 500 “old” zlotys at par, and 500 marks at the rate of two marks for one zloty, into “new” zlotys; and any remaining “old” zlotys and mark banknotes had to be deposited in financial institutions acting as agents for the Government (Decree of January 6, 1945, *Dz. U. No. 1, it. 2*; Decree of February 5, 1945, *Dz. U. No. 5, it. 17*). The ruble cur-

rency of the U.S.S.R. was withdrawn from circulation and ceased to be legal tender in Poland on February 15, 1945 (Decree of January 13, 1945, *Dz. U. No. 2, it. 5*). The ruble banknotes were exchanged into zloty banknotes of the Narodowy Bank Polski at par and in unlimited amount.

The Commission finds on the basis of evidence of record that claimant was the owner of certain zloty banknotes of the Bank Emisyjny w Polsce on January 10, 1945 when they ceased to be legal tender; and that after making the permitted transfer of 500 "old" zlotys into 500 "new" zlotys, he deposited 29,500 "old" zlotys with the Narodowy Bank Polski as required by law, and was unable thereafter to convert this sum into "new" zlotys or to make any use thereof.

The statute which required claimant to surrender his 29,500 zlotys was enacted by the Government of Poland in the enforcement of its currency policy. A state's undeniable sovereignty over its currency is traditionally recognized by public international law; to the power granted by municipal law there is a corresponding international right to the exercise of which other states cannot, as a rule, object (Mann, *The Legal Aspects of Money* 419 (1953)). As the Permanent Court of International Justice has said, "it is indeed a generally accepted principle that a state is entitled to regulate its own currency." (*Serbian and Brazilian Loan Cases*, P.C.I.J., Ser. A Nos. 20-21 at 44 (1929).) It is, however, also true that although persons using foreign money may risk market fluctuations in its value, there is no reason why they should be presumed to have agreed to allow themselves to be expropriated by the results of foreign exchange control or currency legislation. (Wortley, *Expropriation in Public International Law* 108 (1959).) It has been said that states do not incur international responsibility by reason of their currency policy, except when it involves an abuse of rights or a breach of treaty obligations. (Mann, *The Law Governing State Contracts*, 21 *Brit. Yb. Int'l L.* 11, 21 (1944).)

It may be argued that the decree of January 6, 1945, as amended, had as its purpose the reduction of the amount of currency in circulation and for that reason was in line with sound fiscal policy as well as with international law. However, no measures were taken to alleviate the loss of those such as claimant, who had to surrender their cash. Section 5 of the decree of January 6, 1945 provided that in economically justified, exceptional cases, the Minister of the Treasury may grant permission to withdraw the deposited "old" zlotys in the form of "new" zlotys; but claimant's request for such permission was denied on September 14, 1945, and the Commission knows of no instance in

which such permission was granted to a national of the United States.

The Commission finds that in claimant's case the Decree of January 6, 1945, as amended, amounted to an abuse of right, and a taking of his 29,500 zlotys, within the meaning of the Polish Agreement, when the claimant's request for the return of 29,500 "new" zlotys was denied on September 14, 1945.

Since the claimant was deprived of his 29,500 zlotys on September 14, 1945, there remains for determination the question of the dollar value of 29,500 zlotys on that date. For several years immediately preceding World War II, the official rate of exchange was 5.3 zlotys per dollar. During the war and the period immediately thereafter there was a great inflation of Polish currency and prices in Poland rose to a level many times higher than pre-war. The official rate of exchange, while it was not changed, did not in fact prevail. The true value of 29,500 zlotys in September 1945 is more accurately determined by a comparison of the relative purchasing power of the zloty and the dollar in 1945. For this purpose a comparison of the relative cost of living indices for each of the two countries between 1937 and 1945 would be a proper basis. In Poland the cost of living index rose from 100 in 1937 to 8,760 in 1945 (International Monetary Fund, *I International Financial Statistics*, No. 6 at 104 (1948)). In the United States, the cost of living index rose in the same period of time from 100 to 125 (*ibid.* at 124). Since the dollar was worth 5.3 zlotys in 1937, the dollar in 1945 (as measured by relative changes in purchasing power between 1937 and 1945) was the equivalent of 371.424 zlotys. Accordingly, the Commission finds that the claimant's loss, sustained by the surrender of 29,500 zlotys, amounted to \$79.42 (29,500 divided by 371.424); and concludes that claimant is entitled to compensation, under the Polish Claims Agreement of 1960, in that amount.

It is possible, of course, that claimant's total loss with respect to the 29,500 zlotys was greater than \$79.42, inasmuch as he may have paid more than that amount in dollars to obtain the zlotys in the first instance. If so, the zlotys had depreciated in value, as measured by purchasing power, to an equivalent of \$79.42 at the time of taking. This portion of claimant's total loss, caused solely by depreciation in value of the currency which he had chosen to acquire, is not compensable under the Polish Claims Agreement of 1960. (See *Claim of Herbert S. Hale*, Claim No. PO-1011, Dec. No. PO-5, 15 FCSC Semiann. Rep. 32 (July-Dec. 1961).) A state is not liable under international law for fluctuations in the value of its currency, or for losses stemming therefrom. (See *Scott and Rowne, Inc.*, General Docket No. 2378, Decision No. 1-B, American-Mexican Claims Commission; *Borden Covel, Ad-*

administrator, *Estate of Leo Sigmund Kuhn, Deceased*, General Docket No. 2775, Decision No. 25-B, American-Mexican Claims Commission; V Hackworth, *Digest of International Law* 633 (1943); Mann, *The Legal Aspect of Money* 419-420 (1953); and decisions of the Foreign Claims Settlement Commission in *Claim of Joseph Winkler*, Docket No. Y-1465, Dec. No. Y-1134, and *Claim of Karolin Furst*, Claim No. CZ-1381, Dec. No. CZ-682, 17 FCSC Semiann. Rep. 199 (July-Dec. 1962).)

Had claimant made a prewar investment of the money in real property, such property may have retained its equivalent dollar value in postwar years, at the same time becoming worth larger and larger amounts in zlotys as the value of the zloty depreciated. In fact, however, since the claimant's property was 29,500 zlotys, the portion of his loss which resulted from the depreciation in equivalent dollar value of that number of zlotys is not compensable herein, and the measure of his compensation is the dollar value of his 29,500 zlotys at the time of the action which did result in a compensable loss; namely, the denial of September 14, 1945 of claimant's request to withdraw the sum in new zlotys. That amount is \$79.42.

The Commission has decided that in granting awards on claims under the Polish Claims Agreement of 1960, interest shall be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the effective date of the Agreement. (See *Claim of John Hedio Proach*, Claim No. PO-3197, Dec. No. PO-652, 17 FCSC Semiann. Rep. 47 (July-Dec. 1962).) Accordingly, the amount of the award will be increased to that extent.

AWARD

An award is hereby made to ALOIS SZPUNAR in the principal amount of Seventy-Nine Dollars and Forty-Two Cents (\$79.42) with interest thereon at 6% per annum from September 14, 1945 to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Seventy Dollars and Seventy-One Cents (\$70.71).

Dated at Washington, D.C.

May 8, 1963.

Polish currency.—The history of Polish currency from November 11, 1918 when Poland regained its sovereignty is chiefly an account of continued inflation and accompanying depreciation

in value. In 1924 the *Bank Polski* was organized as the bank of issue. The Polish mark was withdrawn and replaced by the zloty at the rate of one zloty for 1,800,000 marks. The value of the zloty in May 1924 was \$0.19142, but gradually declined until stabilized at \$0.112 in 1927. In mid-1933, due to change in the gold standard for the dollar, the comparative worth of the zloty increased, and remained at approximately \$0.18 to \$0.19 until September 1939. During World War II the monetary situation was chaotic. In areas under German control the prewar zloty was abolished as legal tender and exchanged for new currency, a zloty issued by an agency established by the occupation authorities, the *Bank Emisyjny w Polsce*. Old zlotys which were not exchanged became worthless. In addition to the occupation zlotys, Russian rubles and German reichsmarks were in circulation in Poland during the war. On August 31, 1944 the Polish National Committee of Liberation, the then provisional government of Poland, introduced a new zloty, at par with the zloty of the *Bank Emisyjny w Polsce* and the ruble. In the area of Bialystok, reichsmarks were withdrawn from circulation, exchangeable into zlotys at par in limited amounts. In other parts of Poland the occupation zlotys and reichsmarks ceased to be legal tender on January 10 and February 28, 1945, under the Decree of January 6, 1945 (*Dz. U. 1945, No. 1, it. 2*) and the Decree of February 5, 1945 (*Dz. U. 1945, No. 5, it. 17*). Exchange of 500 old zlotys into new zlotys at par was permitted. Reichsmarks, up to 500, were exchangeable at two for one zloty. Reichsmarks and old zlotys in excess of 500 were required to be deposited in financial institutions acting as agents for the government. The ruble ceased to be legal tender in Poland on February 15, 1945, but was exchangeable into zlotys at par in unlimited amounts.

In a claim based upon 2,000 Polish marks in the claimant's possession, the Commission found that the marks had been worthless since 1924. The substitution of zlotys for marks had been applicable to Polish nationals and aliens alike, without discrimination. The Commission held that claimant's loss was caused by the drastic depreciation of the value of the Polish mark, and that a state is not liable under international law for fluctuations in the value of its currency or for losses stemming therefrom. The conversion of marks into zlotys may have made the loss apparent, but was not the proximate cause thereof. It was not an action of the Polish Government constituting a nationalization or other taking of property or appropriation of the use or enjoyment of property. Accordingly, the claim was denied. (*Claim of Herbert S. Hale*, Claim No. PO-1011, Dec. No. PO-5, 15 FCSC Semiann. Rep. 32 (July-Dec. 1961).) In the same manner, a claim based upon pre-World War II zlotys was denied. This claimant's loss was the result of the abolishment of prewar zlotys by the German occupation authorities and their conversion to occupation currency, and was not attributable to any action of the Polish Government constituting a nationalization or other taking of property. (*Claim of Frieda Mandelbaum*, Claim No. PO-9867, Dec. No. PO-7831.)

In the *Szpunar* claim, on the other hand, claimant suffered a loss of 29,500 zlotys issued by the *Bank Emisyjny w Polsce*, which

ceased to be legal tender on January 10, 1945. As permitted by the Decree of January 6, 1945, he transferred 500 old zlotys into new zlotys; and as required by that decree, he deposited his remaining 29,500 old zlotys in a designated bank. Under Section 5 of the Decree, the Minister of the Treasury could grant permission in exceptional cases of economic justification to withdraw deposited old zlotys in the form of new zlotys. Claimant's request for such permission was denied on September 14, 1945, and the Commission held that he lost his 29,500 zlotys at that time. The Commission stated that the Decree of January 6, 1945 amounted to an abuse of right and a taking of claimant's property within the meaning of the Agreement. To determine the dollar value of 29,500 zlotys on January 6, 1945, the Commission worked from the 1937 rate of exchange of 5.3 zlotys per dollar, and by comparison of changes in the cost of living indices for the United States and Poland between 1937 and 1945, calculated a rate of exchange of 371.424 zlotys per dollar for 1945, as a true reflection of relative purchasing power. Claimant's award was in the principal amount of \$79.42. Any loss suffered by claimant in excess of that amount was due to depreciation of the currency, and not compensable under the Agreement.

By use of the same formula, the Commission calculated the zloty value to be 421.779 to \$1.00 in June 1946 (*Claim of Elfriede Raupach Ullrich, et al.*, Claim No. PO-3648, Dec. No. PO-1614, 19 FCSC Semiann. Rep. 23 (July-Dec. 1963)), 514.1 to \$1.00 in September 1947 (*Claim of Antoni Chodorowski*, Claim No. PO-8427, Dec. No. PO-2449), 503.3 to \$1.00 in December 1948 (*Claim of Maria Alembik*, Claim No. PO-7145, Dec. No. PO-9322), and 900 to \$1.00 in 1949 and on January 1, 1950 (*Claim of Anna Gliba*, Claim No. PO-1752, Dec. No. PO-788; *Claim of Aniela Bigot*, Claim No. PO-2939, Dec. No. PO-3056, 20 FCSC Semiann. Rep. 21 (Jan.-June 1964)).

Continued inflation resulted in a further devaluation of the zloty on October 30, 1950 by the Decree of October 28, 1950 (*Dz. U. 1950, No. 50, it. 461*), as a result of which zlotys in savings accounts were converted into new zlotys at the rate of 100 to 3. A portion of a claim based upon the consequent reduction of a bank account from 5,285 zlotys to 158.58 zlotys, which was then translated into dollars and paid to the claimant, was denied. The loss for which claimant sought compensation was a result of currency depreciation, and not compensable under the Agreement. (*Claim of Zofia Walag*, Claim No. PO-2055, Dec. No. PO-3061, 20 FCSC Semiann. Rep. 22 (Jan.-June 1964).)

MAX STEINBERG

Against the Government of Poland

Transfer of sovereignty over Eastern Territories of Poland to U.S.S.R. did not constitute a taking of property in those areas under Polish Claims Agreement of 1960 and Section 4(a), Title I of the 1949 Act, or under international law. Eastern Territories were not under control of Polish Government since September 17, 1939, and outside jurisdiction of Poland since August 16, 1945. Claim denied for failure to sustain burden of proving a taking of property by Poland.

Polish laws granting owners who lost property in Eastern Territories, when ceded to U.S.S.R. in 1945, equivalent property in Poland were conditioned upon owners remaining permanently on the new land, and personally managing and using it. Claimant, having left Poland in 1947, was unable to qualify, and consequently his loss was not attributable to Poland.

PROPOSED DECISION

This claim is based upon the asserted ownership and loss by the claimant, MAX STEINBERG, of property located in Tarnopol, in the former Polish voivodeship of Tarnopol, which is situated in the so-called Polish Eastern Territories, now a part of the U.S.S.R.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended, the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Polish Claims Agreement of 1960, Article 2 of which provides:

Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States for

- (a) the nationalization or other taking *by Poland* of property and of rights and interests in and with respect to property;
- (b) the appropriation or the loss of use or enjoyment of property under *Polish* laws, decrees or other measures limiting or restricting rights and interests in and with respect to property . . . ; and
- (c) debts owed by enterprises which have been nationalized or taken *by Poland* and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken *by Poland*. (Emphasis added.)

If an award is to be made on a claim filed under the Agreement, the Commission must find that the claim comes within the purview of the above-quoted Article. Hence, a claim may be com-

pensable only if based upon a loss arising from a nationalization, appropriation, or other taking of property *by the Government of Poland*.

The Commission finds that the area in which the claimant's property is situated is in the so-called Polish Eastern Territories which are now a part of the U.S.S.R., and that the Government of Poland had no control over these territories after September 17, 1939, and no sovereignty over the territories after August 16, 1945. Accordingly, there could not have been a nationalization, appropriation, or other taking of property there by the Government of Poland after September 17, 1939.

Except for a short-lived "Congress Poland" (1815-1832), there was no independent state of Poland from the time of the Third Partition in 1795 until the close of World War I. Although the Allied Governments agreed upon a reconstitution of Poland, the Paris Conference of 1919 was unable to settle the matter of its eastern boundary, and hostilities continued between Poland and Russia in 1919 and 1920. The Curzon Line, which approximates the present boundary, had its origin when the northern half of the present line was proposed on December 8, 1919 by the Supreme Council of the Allied and Associated Powers for purposes of an armistice. It was rejected by both belligerents. Polish forces drove deep into Russia in the spring of 1920, but by July 10, 1920 had retreated to the gates of Warsaw, and announced that they would accept an armistice along the proposed line. In a note to the Russians, Lord Curzon, the British Foreign Secretary, extended the line southward to its present length. Russia declined the proffered armistice, and the conflict continued with the Poles prevailing until the Treaty of Riga was signed on October 12, 1920, establishing a border well to the east of the Curzon Line, and embracing between the two lines the Eastern Territories of interest herein. Both governments approved the treaty on March 18, 1921. It was recognized by the Council of the League of Nations on February 3, 1923, by the Conference of Ambassadors on March 15, 1923, and by the United States on April 5, 1923, and remained unchallenged until 1939. During this period, privately owned property in the Eastern Territories was located within Poland and might have been subjected to Polish nationalization measures had the Government of Poland embarked upon any such programs.

Shortly before the onslaught of World War II, the Ribbentrop-Molotov agreement was signed on August 23, 1939, binding Germany and the U.S.S.R. to mutual non-aggression. By a secret protocol to the agreement, spheres of interest were laid down for application "in the event of a territorial and political rearrangement." Such an event occurred when Germany invaded Poland

on September 1, 1939, and Russia followed suit on September 17, at which time the Polish Government fled the country to operate in exile from Rumania, France, and finally London. Poland was occupied completely by German and Russian forces, meeting at the Ribbentrop-Molotov line, which corresponded partially with the Curzon line and otherwise was more favorable to the Soviet Union. This line was formalized by German-Russian treaty on September 29, 1939. The Polish Government in Exile rallied Polish armed forces to Allied support, but was at no time able to enforce its will in Poland.

On June 22, 1941, Germany attacked Russia. The British then moved to reconcile its old and new allies, Poland and Russia. After a month of negotiations, during which the Russians insisted that their western frontier was not open to discussion, an agreement was signed in London on July 30, 1941 by representatives of Poland and the U.S.S.R., which stated, among other things, that earlier German-Russian agreements had lost their validity, but was silent as to where the Russo-Polish frontier should be fixed. The Poles had wanted more than mere dissolution of the Ribbentrop-Molotov line, and had striven for specific treaty recognition of the 1921 boundaries; but they signed the agreement in the knowledge that they could get nothing better.

In the meantime, however, the Eastern Territories had been incorporated formally into the Soviet Union, supposedly according to the will of the inhabitants as freely expressed in a "plebiscite" held shortly after the 1939 Russian invasion. Immediately upon occupation of Eastern Poland in 1939, Soviet authorities had removed all members of State and local government administrations from office, arresting most of them, and appointing so-called "temporary administrations" in their place, composed principally of Red Army officers and Soviet officials. On October 6, 1939 an election was scheduled for October 22, 1939 of National Assemblies for the Western Ukraine and Western White-Ruthenia, which between them would govern the Eastern Territories. On the latter date, elections were conducted by the Red Army, NKVD, and Communist organizers. The two National Assemblies convened in Lwow and Bialystok, and on October 27 and 29, enacted resolutions for incorporation of their territories into the U.S.S.R. Formal incorporation of Western Ukraine was accomplished by Decree of the Supreme Council of the U.S.S.R. on November 1, 1939, and of Western White-Ruthenia on November 2, 1939.

The Poles now hopefully interpreted the London agreement of July 30, 1941 as Soviet recognition of the pre-1939 boundary, but the Soviet Government would not commit itself, and made no

move to disincorporate the territories. At every opportunity, the London Poles expressed their claim to all territory within their pre-war boundaries, but were met with official silence. In any event, all of Poland and the Eastern Territories was now under German control, with the battle line well into Russian territory. As they had advanced, the Germans had incorporated Western Poland into the Reich in two Gaus—Danzig and the Warthegau. The rest of Poland up to the Ribbentrop-Molotov line was given the name General Government. Lands east of the line were administered separately, as part of German-occupied Russia.

Friction arose between the London Poles and the Soviet Government over many things, not least over the citizenship status of Poles who had fled or been deported to Russia. On November 29, 1939, a Soviet Decree stated that all citizens of Western districts of the Ukrainian and White-Ruthenian Soviet Socialist Republics who were present in those districts on November 1 and 2, 1939, acquired Soviet citizenship. As evidence of "good will," the Soviet Government exempted persons of "Polish origin" from this automatic Soviet citizenship; but on January 16, 1943 they eliminated this exception.

On February 19, 1943 an article appeared in *Radianska Ukraina*, setting forth in print for the first time since the agreement of July 30, 1941, the Russian claim to retention of the Eastern Territories, and characterizing Polish pretensions as wholly unjustified. A stiff Polish note of February 25 elicited a Soviet reply of March 1, 1943 invoking the Atlantic Charter of August 14, 1941 as justification for the Curzon Line. Then, in April 1943, the Germans announced the discovery at Katyn of a mass grave of thousands of Polish officers who had been missing since taken as prisoners-of-war by the Russians. The Poles appealed to the International Red Cross for an investigation, whereupon the Soviet Union broke off diplomatic relations with the Polish Government in Exile, stating that the motive for the Katyn accusations was to wrest concessions from them regarding the Eastern Territories.

The British now began urging the London Poles to accept the inevitability of the Curzon Line. With the tide of battle running in its favor, the Soviet Government issued a statement on January 11, 1944 that the injustices of the 1921 Riga Treaty had been rectified by the 1939 incorporation of the Eastern Territories into the Soviet Union, and that Poland must be reformed by the acquisition of German lands in the west. The eastern boundary was to be the Curzon Line, but willingness to negotiate adjustments therein as warranted by population majorities was expressed. It was already apparent, however, that the Kremlin would not be satisfied to see the Polish Government in Exile

restored to power. In Moscow, a Union of Polish Patriots had been formed among pro-Soviet Poles in 1943, and was groomed for eventually taking over the government of a liberated Poland. Pro-Soviet resistance elements from Poland were added, and the group became the Polish Committee of National Liberation, pledged to recognize the Curzon Line as their eastern frontier.

In July 1944 the Red Army crossed the Curzon Line at the Bug River, and so, in the official Soviet view, entered Poland. As Soviet troops moved westward, the Polish Committee of National Liberation moved with them, establishing themselves in Lublin, and receiving from the Red Army the responsibility for civil administration behind the front. On December 31, 1944, they proclaimed themselves the Provisional Government of Poland and were recognized as such by the Soviet Government on January 5, 1945.

At the Yalta Conference in February 1945, Roosevelt, Churchill, and Stalin agreed formally on the Curzon Line, with slight modifications in Poland's favor, and decided that the Lublin Government must be reorganized to include democratic leaders from the West, and must then hold free elections. A Commission established to work out details was unable to agree, and a months-long deadlock ensued. The deadlock was broken by Mr. Harry Hopkins, representing President Roosevelt in a June visit to Moscow, after which the Commission quickly agreed upon a list of leaders. On June 28, 1945 the New Polish Provisional Government of National Unity was installed, with a twenty-man Cabinet including sixteen Lublin members. British and United States recognition came on July 5, 1945. The new government and the Soviet Union formalized their mutual frontier by the treaty of August 16, 1945, since which time the Eastern Territories have been indisputably under Soviet sovereignty.

From the above historical narrative,¹ it will be seen that at no time since September 17, 1939 could there have been a nationalization or other taking of property in the Eastern Territories by a Polish Government. During a six-month period from January 5, 1945 to July 5, 1945, there were two rival Governments of Poland—the Lublin group which was recognized by the Soviet Union, and the London group recognized by Britain, the United States, and other nations. The London Poles, who had held out for re-establishment of the 1921 eastern frontier, never regained power within the country from which they had been exiled. The Lublin group was the pro-Soviet group which had pledged its acceptance of the Curzon Line as the eastern boundary of Po-

¹ Sources include: Mikolajczyk, *The Pattern of Soviet Domination*; Churchill, *The Second World War*; Kirkien, *Russia, Poland and the Curzon Line*; Shotwell & Laserson, *Poland and Russia, 1919-1945*; Grabski, *The Polish-Soviet Frontier*; Jordan, *Poland's Frontiers*.

land before any Polish territory was liberated. As the liberation progressed, it was this group which received civil authority over lands west of the Curzon Line, and evolved into the postwar Government of Poland. Territories east of the Curzon Line (in which the claimant's property was located) were not returned to the control of a Polish Government after September 17, 1939.

In the instant claim, there is no evidence that the property of the claimant was nationalized or otherwise taken by the Government of Poland or any other government at any time. True, there was a transfer of sovereignty, from Poland to the U.S.S.R., of the territory in which the property was located; but, whether this occurred on August 16, 1945 or earlier, the transfer of sovereignty did not constitute a taking of the private property of individuals within the territory, and in itself did not disturb the title of private individuals to property. A taking by the Government of Poland of property owned by United States nationals in the Eastern Territories, when that government had the sovereign right and the power to effectuate such a taking, might give rise to a compensable claim under the Agreement. The loss of sovereignty over the territory was not a taking of private property within the territory by the Government of Poland; and a later taking of such property by the new sovereign, the Government of the U.S.S.R., is not within the purview of the Polish Claims Agreement.

The claimant herein has not alleged a nationalization, appropriation, or other taking of property by the Government of Poland before September 17, 1939. By reason of the location of the property, a loss thereof occurring since September 17, 1939, would not have occurred as a result of any Polish law, decree, or other measure. Accordingly, the claim is not one within the purview of Article 2 of the Agreement, and is hereby denied.

Dated at Washington, D.C.

May 23, 1962.

FINAL DECISION

This claim is based upon the asserted ownership and loss by claimant of real property situated in Tarnopol, formerly in the so-called Polish Eastern Territories, but now a part of the U.S.S.R. Claimant states that he has been a national of the United States since his naturalization on February 3, 1959.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended (64 Stat. 12 (1950), 22 U.S.C. § 1623 (a) (1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Polish Claims Agreement of 1960 (*Agreement with the Govern-*

ment of the Polish People's Republic Regarding Claims of Nationals of the United States, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960)). That Agreement provides as follows:

Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States for

- (a) the nationalization or other taking *by Poland* of property and of rights and interests in and with respect to property;
- (b) the appropriation or the loss of use or enjoyment of property under *Polish* laws, decrees or other measures limiting or restricting rights and interests in and with respect to property . . . ; and
- (c) debts owed by enterprises which have been nationalized or taken *by Poland* and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken *by Poland*. (*Polish Claims Agreement of 1960, supra, Article II* (Emphasis added).)

If an award is to be made on a claim filed under the Agreement, the Commission must find that the claim comes within the purview of the above-quoted Article. Hence, a claim may be compensable only if based upon a loss arising from a nationalization, appropriation, or other taking of property *by the Government of Poland*.

In its Proposed Decision, the Commission found that Tarnopol is situated in the former Polish Eastern Territories which are now a part of the U.S.S.R., and that the Government of Poland had no control over these territories after September 17, 1939, and had no sovereignty over them after August 16, 1945. Since it was concluded that there could not have been a nationalization, appropriation, or other taking by the Government of Poland of property located in such territories after September 17, 1939, the claim was denied.

In objecting to the Proposed Decision, claimant states that the basis of his claim is not the loss of the property in Tarnopol, but a subsequent loss of rights with respect to property in Poland which he acquired as one who was compelled to abandon property in the territory ceded to the U.S.S.R. It is alleged that under an agreement or agreements between the Polish and Soviet Governments, the Government of Poland became legally obligated to compensate persons who lost property in the Eastern Territories, by providing them with equivalent property elsewhere in Poland. Claimant asserts that in August 1947 he registered his rights to such property at the State Repatriation Office in Gliwice, Po-

land. Before benefiting in any way from this registration, however, he left Poland in December 1947, arriving eventually in the United States and becoming a United States citizen on February 3, 1959. At that time, argues claimant, he lost his Polish nationality and all rights under Polish law to receive property in Poland in exchange for that which he had lost in Tarnopol.

Claimant has been unable to cite specifically an agreement between the Polish and Soviet Governments obligating the Polish Government to compensate repatriants for the loss of their property. Despite diligent search, the Commission has been unable to discover any such agreement. Assuming, *arguendo*, that the agreement exists, and that the Polish Government assumed an obligation to compensate those who lost property in the ceded territories, a failure to fulfill such an obligation would not give rise to a compensable claim under the Polish Claims Agreement of 1960. A taking of the original property by the Soviet Government would not, of course, be a taking by the Government of Poland, and hence would be beyond the scope of the Agreement. A failure on the part of the Polish Government to compensate the former owner for the loss, even if there had been a legal obligation to do so, would not constitute a nationalization, appropriation, or other taking of property by the Government of Poland within the meaning of the Agreement. There would have been but one taking, and that would have been accomplished by the Soviet Union.

Although there appears to have been no treaty obligation in this respect, a study of Polish legislation reveals that certain measures were enacted to rehabilitate repatriants from the ceded territories. A State Repatriation Office was established by the Decree of October 7, 1944 (*Dz. U. 1944, No. 7, it. 32*), to organize the repatriation and resettlement of persons in the western area formerly under German jurisdiction, known as the "regained territories." This office was abolished by the Decree of March 22, 1951 (*Dz. U. 1951, No. 18, it. 141*), which transferred its functions to other agencies of the Polish Government. A Decree of September 6, 1946 (*Dz. U. 1946, No. 49, it. 279*) provided for the colonization of the regained territories under "acts of granting," giving to persons who had abandoned farms in the former Eastern Territories the "right to possession" of equivalent property in the west, for the purpose of using it and deriving profit from it free of charge. The law provided specifically that the right resulting from the act of granting was of personal character, and could not be alienated or inherited. The right was withdrawn upon noncompliance with the conditions of the grant, and the grantee was removed from the farm and it

was reassigned to some other person. The conditions included an election on the part of the grantee to reside permanently on the property and manage it personally, and assume the obligation to cultivate the land and the responsibility for buildings, equipment, and livestock. Transfer of legal title to persons occupying property under acts of granting did not occur until several years later. By the Decree of March 12, 1958 (*Dz. U. 1958, No. 17, it. 71*), the right of repatriants to obtain agricultural land in this fashion was extinguished, unless possession already had been taken. The right of a repatriant to obtain possession of non-agricultural property in the regained territories (the equivalent of that which was lost in the east) had been provided by a Decree of December 6, 1946 (*Dz. U. 1946, No. 71, it. 389*), and likewise was dependent upon the grantee's domicile on the property.

It thus appears that had claimant remained in Poland, he may have been able to avail himself of benefits offered by Polish law to repatriants, and to have obtained possession of, and eventually title to, property in the west. Had he done so, and had his newly acquired property been nationalized or otherwise taken by the Polish Government after he became a national of the United States and before July 16, 1960, the date of the Polish Claims Agreement of 1960, he would have been in a position to present a valid claim under the Agreement. In leaving Poland, he forfeited his claim to the benefits provided by Polish law. This was not a loss covered by the Polish Claims Agreement; and even if it were, it would have been one suffered long before he became a national of the United States, and not one caused by and arising at the time of his naturalization.

Inasmuch as claimant's property in Tarnopol was not taken from him by the Government of Poland, and he did not become the owner of other property in Poland which was nationalized or otherwise taken by the Government of Poland at a time when he was a national of the United States, the claim must be and hereby is denied.

Dated at Washington, D.C.
March 27, 1963.

War damage.—Not all losses sustained by nationals of the United States in an area over which Poland had jurisdiction were within the scope of the Polish Claims Agreement of 1960.

Certain losses were in no way attributable to the Government of Poland. The Commission consistently held that losses sustained through damage to or destruction of property during World War II or the taking of property during World War II by forces occupying Poland were not settled or discharged by the Polish Claims Agreement of 1960. Accordingly, a claim based entirely upon such wartime losses, and not alleging or establishing a taking of claimant's property by the Government of Poland, was denied. (*Claim of Dominick W. Przybylinski*, Claim No. PO-1358, Dec. No. PO-669, 17 FCSC Semiann. Rep. 49 (July-Dec. 1962).)

Claims arising in Eastern Territories ceded to U.S.S.R.—Many claims were filed by persons who had owned property in the Eastern Territories of Poland which were occupied by Russian forces at the outset of World War II, and have been a part of the U.S.S.R. since the war. Although such claimants had lost their property, their claims were denied as in the Proposed Decision in the *Steinberg* claim because there had been no nationalization or other taking of the property by the Polish Government. In that claim it was urged that the loss was attributable to Poland by reason of the transfer of territory from Poland to the U.S.S.R. The Commission held that the transfer of sovereignty was not a taking of the private property of individuals within the territory; and a later taking of such property by the new sovereign, the Government of the U.S.S.R., was not within the purview of the Polish Claims Agreement of 1960. Claimant objected to the Proposed Decision and alleged that under a Polish-Soviet agreement the Government of Poland became legally obligated to compensate persons who lost property in the Eastern Territories by giving them equivalent property elsewhere in Poland. He had registered his rights to such property in August 1947 but left Poland in December 1947 and became a United States national in 1959. The Commission found no evidence of the existence of the alleged Polish-Soviet agreement, but held in its Final Decision that the claim was not compensable in any event. The property which claimant had owned, had not been taken by the Government of Poland. Although the Polish Government did enact legislation under which repatriants could obtain the use of similar property in the west, claimant had left Poland without qualifying for benefits thereunder, and at no time became the owner of any other property which subsequently was taken by the Polish Government when he was a national of the United States. His leaving Poland and thus forfeiting a claim to benefits under Polish law was not a loss covered by the Agreement.

Prerequisite that claim arise from violation of international law.—Even in cases where a loss was caused by the action of the Government of Poland, claims were denied where such action was not in violation of international law. One claimant had been arrested on board his yacht on July 20, 1937, and charged with attempting to smuggle 60,000 zlotys out of Poland. He was found guilty and sentenced to imprisonment and fine, and his yacht and the 60,000 zlotys were confiscated by the Polish court by a criminal sentence. Claimant contended that the confiscation constituted a taking of property within the meaning of the Agreement.

Stating that Americans abroad are responsible for their actions under the laws of the country they visit, the Commission denied the claim. There had been neither a lack of due process nor unusual or excessive punishment. Poland had the sovereign right to impose penalties for the violation of its laws. In doing so under the circumstances in this case, it incurred no liability under international law and was not required to compensate claimant for its actions. The Commission, therefore, concluded that the confiscation of claimant's property in Poland was not a nationalization, appropriation, or other taking of property within the meaning of the Polish Claims Agreement of 1960. (*Claim of Walter Peter Milewski*, Claim No. PO-5890, Dec. No. PO-1921, 19 FCSC Semiann. Rep. 42 (July-Dec. 1963).)

Non-discriminatory taxes.—Similarly, imposition of taxes on real property was held by the Commission to be a governmental action which did not amount to a taking of property within the meaning of the Agreement. A claimant argued that his one-half interest in real property in Warsaw was confiscated by the Government of Poland on February 22, 1960, when a mortgage for unpaid war enrichment tax was recorded on the property in favor of the Government of Poland. The property had been encumbered by two mortgages: one for the monthly payment of 85 United States dollars and the other in the amount of 144,800 "gold" zlotys. The Decree of July 27, 1949 (*Dz. U. 1949, No. 45, it. 332*) annulled the creditor's right to receive payment in currency of the United States and by abolishing the "gold" clause permitted payment in zlotys of much depreciated purchasing power. At the same time the Government of Poland imposed a tax upon the profits so realized by the debtor in order to prevent the creation of a windfall to him. (Decree of July 27, 1949; *Dz. U. 1949, No. 45, it. 333*.) The Commission held that the imposition of a war profits tax, not discriminating against aliens, was a legitimate exercise of sovereign authority and did not amount to a confiscation of claimant's property. (*Claim of Stanislaw Borkowski*, Claim No. PO-3721, Dec. No. PO-5864.)

In the Matter of the Claim of

Claim No. PO-3197
Decision No. PO-652

JOHN HEDIO PROACH

Against the Government of Poland

Awards under Polish Claims Agreement of 1960 and Section 4(a), Title I of the 1949 Act increased by interest at rate of 6% per annum from date of loss to July 16, 1960, date of Agreement.

Award for agricultural property measured by average value of similar property in same area, in absence of better evidence.

PROPOSED DECISION

This claim, in the amount of \$1,100, is based upon the asserted ownership and loss of seven hectares of farmland in Stefkowa, Poland. Claimant, JOHN HEDIO PROACH, has been a national of the United States since his naturalization on March 18, 1931.

Under the Polish Claims Agreement of 1960, claims by nationals of the United States for "(a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property . . ." are settled and discharged. (*Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States*, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 [1960], Article II.)

The Agreement further defines "claims of nationals of the United States" as including

rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropriation or other taking to [July 16, 1960], have been continuously owned . . . (a) directly by natural persons who were nationals of the United States (*Polish Claims Agreement of 1960, supra*, at Annex, Paragraph A. See also 14 *FCSC Semiann. Rep.* 186 [Jan.-June 1961].)

The Commission finds, on the basis of official Polish documentation, that claimant was the owner of seven hectares of farmland in Stefkowa, Poland, and that his property was taken by the Government of Poland pursuant to the Decree of July 27, 1949. (Decree of July 27, 1949 on the taking into the ownership of the State of real properties, not in actual management of their owners, and situated in certain counties of the Bialystok, Lublin, Rzeszow, and Krakow *voivodeships* (*Dz. U.* 1949, No. 46, *it.* 339).)

Under the terms of that decree, however, property is taken on the effective date of a subsequent decision of the Presidium of the County National Council affecting that property. From the evidence presented to the Commission, it appears that the decision of the Presidium affecting claimant's property was effective March 19, 1956. The Commission finds, therefore, that claimant's land was taken on that date.

Claimant states, in his official application form, that his land was of good fertility and was cultivated in its entirety, producing rye, wheat, oats, potatoes, carrots, and clover. He has submitted no evidence to corroborate his claim as to its value.

The Commission has conducted an independent investigation into methods of evaluating agricultural property in Poland. In the absence of other evidence as to the value of particular prop-

erty, the Commission has considered the average values published in 1956 by the *Praesident des Bundesausgleichsamtes, Bad Homburg (Verzeichnis der Gemeinde-Hektarsätze mit alphabetischem Kreisverzeichnis der Vertreibungsgebiete, 1956, (Supp.))*. These values were used in administering the German Equalization of Burdens Law.

In conjunction with these German sources, the Commission has made an upward adjustment in value according to a formula evolved by the *Kommission für Nationalisierungsentschädigungen*, the Swiss national claims commission, for use in determining claims of Swiss nationals against the Government of Poland.

These methods indicate an average value of \$233.25 per hectare for farmland in the vicinity of Stefkowa, Poland. Accordingly, the Commission finds that the value of claimant's property at the time of its taking was \$1,632.75, and concludes that he is entitled, under the Agreement, to an award in that amount.

An important question presented to the Commission in this case is whether interest should be added to awards made under the Polish Claims Agreement of 1960 for the nationalization, appropriation or other taking of property. The Agreement is silent as to this matter, and the International Claims Settlement Act of 1949, as amended, 64 Stat. 12 (1950), 22 U.S.C. §§ 1621-42 (1958), contains only general terms with reference to interest. Section 7(a) of that Act authorizes and directs the Secretary of the Treasury to pay, as prescribed by Section 8, "an amount not exceeding the principal of each award, plus accrued interest *on such awards as bear interest. . .*" (64 Stat. 16 (1950), 22 U.S.C. § 1626(a) (1958) (Emphasis added).) And Section 8 of the Act, after providing for certain initial and additional payments on the principal of each award, directs the Secretary of the Treasury, "after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest *on such awards as bear interest.*" (64 Stat. 17 (1950), 22 U.S.C. § 1627(c) (1958) (Emphasis added).) Nowhere does the Act specify *which* awards should bear interest.

In a case of this nature, the Commission is expressly directed by Congress to apply "the applicable principles of international law, justice, and equity." (International Claims Settlement Act of 1949, as amended, 64 Stat. 12 (1950), 22 U.S.C. § 1623(a) (1958).)

Although some commissions have refused to allow interest in claims of this type on the ground that interest is a matter of contract which should be specifically provided for in the protocol,

(see Borchard, *The Diplomatic Protection of Citizens Abroad* 428 (1928) and authorities cited therein), this Commission regards it as a settled principle of international law that "interest, according to the usage of nations, is a necessary part of a just national indemnification." (VI Moore, *A Digest of International Law* 1029 (1906), citing Davis, *Notes, Treaty Vol. (1776-1887)*; Wirt, *At. Gen.*, 1 Op. 28, Crittenden, *At. Gen.*, 5 Op. 350; Geneva Award, 4 *Papers Relating to the Treaty of Washington*, 53.)

"The award of interest is usually considered to be merely a part of the duty to make full reparation arbitral tribunals have felt that it was not outside of their jurisdiction to award interest, *even though the Convention by which they were set up made no mention of interest.*" (Eagleton, *The Responsibility of States in International Law* 203-4 (1928) (Emphasis added).)

The theories upon which interest is founded are varied. Some tribunals have expressed the idea that interest is given as compensation for the loss of the use of the principal during the period within which the payment thereof continues to be withheld (see *Opinions of Commissioners, United States-Mexican General Claims Commission* 189 (1927) (*Illinois Central R.R. Co. v. United Mexican States*)). Interest has been included by one author as a natural part of the compensation for the "improper withholding of satisfaction" (see Borchard, *op. cit. supra.* at 428).

Again, it has been said that the awarding of interest is in the nature of damages from the date of the loss. (*Opinions of Mixed Claims Commission, United States and Germany 1925-1926*, 62 (Consol. Ed. 1927) (Ad. Dec. No. 3).)

On whatever theory the awarding of interest is based, we are constrained to adhere to the international law principle, to which we deem it proper to give effect, that interest must be regarded as a proper element of compensation. The Commission therefore concludes that the award of interest in the instant case is not only in conformity with the principles of international law and the Polish Claims Agreement of 1960, but is required by equity and justice, and should therefore be allowed.

The Commission is next faced with the problem of the rate of interest to be allowed. This rate has generally varied from three to six per cent, although higher amounts have been granted on occasion (see authorities cited in Borchard, *op. cit. supra.* at 429). The Mixed Claims Commission of the United States and Germany, *supra.* granted 5%; the Spanish-American Commission of 1871 allowed 8%. (For a list of commissions in which interest has been allowed on awards, together with the various rates of

interest, see Ralston, *International Arbitral Law and Procedure* 82-87 (1910).)

Although there is no settled rule as to the rate of interest, it is an appropriate exercise of the jurisdiction of the Commission to determine this rate in accordance with all the circumstances before it, including the applicable principles of international law, justice, and equity. Its object in so doing is to arrive at a just and equitable compensation for the wrong. The Commission may also consider its own decisions concerning the applicable rate of interest in its prior international claims programs. In these programs, the Commission has adopted the figure of 6% as a traditional and customary interest rate for claims of this nature.

In light of this international law precedent, custom, and tradition, the Commission therefore concludes that an award of interest in the present case at the rate of 6% is an appropriate, equitable, and just measure of compensation under all the circumstances.

Similarly, there is no settled rule in universal effect as to the period during which the interest shall run. Various terminal dates have been applied by different commissions, including the date of the original injury, the date of the notice of the claim, or the date of payment (see authorities cited in Eagleton, *op. cit. supra*, at 204-05; Borchard, *op. cit. supra*, at 428-29). The Commission notes, however, that the prevailing opinion in international law is that such interest should run from the date the claim arose until the "date of payment" (*ibid.*). The Commission notes further that the date the claim arose in this case is the date of loss (cf. Polish Claims Agreement of 1960, *supra*, at Article II; Annex, Paragraph A). The Commission concludes that, for the purpose of this decision, the "date of payment" in the above context is the date of the Polish Claims Agreement of 1960, under the terms of which all claims of this type were fully settled and discharged. (Polish Claims Agreement of 1960, *supra*, at Article I.)

Accordingly, the amount of the award in this claim shall be increased by interest thereon at the rate of 6% per annum from March 19, 1956, the effective date of loss of the property and the date on which the claim arose, to July 16, 1960, the effective date of the Polish Claims Agreement and the date on which the claim was settled.

It has been noted, in addition, that the amount of this award is greater than the amount for which claim was made. The amount claimed, however, was claimant's estimate of the value of his property in 1912, rather than in 1956, the date of taking. The amount of an award by the Commission is determined by its

finding based upon all the available evidence as to the value of the property at the time of loss. In determining this amount, the Commission is not bound by any lesser or greater amounts which may have been advanced by the claimant as his estimate of the value of the property.

AWARD

An award is hereby made to JOHN HEDIO PROACH in the principal amount of One Thousand Six Hundred Thirty-two Dollars and Seventy-five Cents (\$1,632.75), with interest thereon at 6% per annum from March 19, 1956, to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Four Hundred Twenty-three Dollars and Seventy Cents (\$423.70).

Dated at Washington, D.C.

December 10, 1962.

Valuation of property.—The items of property forming the bases of claims under the Polish Claims Agreement of 1960 varied from the small peasant's farm in Rzeszow to manorial estates in Kielce; from a one-room frame farm building to a modern apartment house in Warsaw; from a flour mill in a small town to a corporation in Poznan; and from businesses such as health resorts in Wroclaw to department stores in Lodz. Such property was taken by the Government of Poland as early as 1944 and as late as 1960. Due to the economic conditions prevailing during these years, amounts expressed in inflated zlotys did not accurately reflect the true value of the property as of the date of its nationalization, appropriation or other taking by the Government of Poland. In the circumstances, the Commission generally sought to determine the pre-World War II value of the property, making appropriate value adjustments to the date of loss.

The Commission maintained a field office in Warsaw, Poland, for the purpose of making independent investigation concerning the validity of claims and the value of property, where possible. The Commission also was aided in its work by the *Bank Handlowy*, an agency of the Polish Government, which caused the local presidiums to provide such evidence as was available to them regarding property ownership, condition, and value.

Use of average values for farmland.—In the absence of other evidence as to the value of agricultural property, the Commission considered the average values published in 1956 by the *Präsident des Bundesausgleichsamtes, Bad Homburg (Verzeichnis der Gemeinde-Hektarsätze mit alphabetischem Kreisverzeichnis der Vertreibungsgebiete)* used in administering the German *Lasten-*

ausgleichsgesetz (Equalization of Burdens Law), and the average values published by the *Kommission für Nationalisierungsentschädigungen*, the Swiss National Claims Commission, used in determining claims of Swiss nationals against the Government of Poland. Thus, in the *Proach* claim, the Commission found seven hectares of farmland in Stefkowa, Poland, to have been worth \$1,632.75 at the time of loss, an average of \$233.25 per hectare. By the same method, 1,652 hectares of farmland near Sedziszow, Poland, was valued at \$298.00 per hectare. (*Claim of Fidelity-Philadelphia Trust Company, Executor of the Estate of Alfred Wielopolski, Deceased*, Claim No. PO-9916, Dec. No. PO-9321.) For farmland in the vicinity of Pilzno, Poland, the same method indicated an average value of \$267.50 per hectare and the value of claimant's 1.62 hectares of farmland was established accordingly. In the same decision the Commission found that the average value of a farmhouse and a barn in that vicinity was \$1,500.00 as of June 9, 1959, the date of loss. (*Claim of Fannie Jacobs*, Claim No. PO-2374, Dec. No. PO-901, 18 FCSC Semiann. Rep. 16 (Jan.-June 1963).) A typical Polish farmhouse was built of solid timber covered with clay and whitewash under a thatched roof, or occasionally wooden shingles, containing two large chambers with a stove and bread baking oven in the corner, earth or wooden board floor and an unfinished attic used for storage of household goods or winter supplies.

Valuation of farmland on specific evidence.—Where more specific evidence as to the particular property involved was submitted by claimant or otherwise obtained by the Commission, such as purchase price, photographs, rental income, insurance data, appraisals, or detailed descriptions, such evidence was used by the Commission in preference to average values for the area where the property was situated. No such evidentiary material was considered conclusive as to value. Its weight and probative value was a matter for the judgment of the Commission in each case. In one instance a 1961 appraisal by agents of a Polish court, adopting three separate methods of evaluation and combining prewar and postwar zloty figures, was not deemed persuasive; and the average value of \$356.25 per hectare for farmland in the area was employed in the Commission's calculation. (*Claim of Paul Sapieha*, Claim No. PO-3842, Dec. No. PO-3215, 20 FCSC Semiann. Rep. 25 (Jan.-June 1964).) Where a claim was for 400.18 hectares of farmland and the evidence disclosed that 116.61 hectares of this total was forest land not of commercial value, the average farmland value was applied only to 283.57 hectares and the value of the forest land was computed at one-half that value per hectare. (*Claim of Henry Radajewski*, Claim No. PO-3823, Dec. No. PO-910.) Average farmland value was not applied where a claim was for the loss of four large estates, consisting of agricultural land, forest land, and improvements. The value of the property was based upon the Commission's independent investigation, photographs, and a forest engineer's appraisal. (*Claim of Maciej Mikolaj Radziwill*, Claim No. PO-2853, Dec. No. PO-4713.)

Valuation of improved real property.—Urban property was involved in the same claim, and the Commission found the value of an apartment house in Warsaw to have been \$280,000.00 when

it was taken by the Government of Poland on December 27, 1954. In this value determination, the Commission considered the size of the building site and its purchase price in 1936, and appraisal of the building by its former manager, its location in the center of Warsaw, and the fact that it had seven stories, 25 large apartments, and a prewar yearly rental income of more than 80,000 zlotys. In another instance, photographs, reports of rental receipts, architectural plans and sketches, and a detailed description by a licensed contractor-architect, were considered in determining the value of two buildings in Chorzow, Poland, to have been \$44,200.00 and \$68,000.00 at the time of their loss. (*Claim of Stephany Swiader, et al.*, Claim No. PO-2916, Dec. No. PO-8291.)

As its experience with urban property in the Polish claims program increased, the Commission amassed data on building site costs in different sections of various cities, construction costs per cubic meter for all types of residential and commercial structures in different locations, with or without central heating and other utilities, and depreciation rates. In time, the Commission's determination of value of a specific property was aided by evidence of the value of other similar property in the same general location. In many instances, this made it possible to determine the value of property in the absence of evidence such as purchase price, rental income, or expert appraisals, on the basis of reliable information as to location, number of stories and rooms, dimensions, type of construction, and age. (*Claim of Gucia Freundlich*, Claim No. PO-5784, Dec. No. PO-2469; *Claim of Irene Engelman*, Claim No. PO-2063, Dec. No. PO-7566; *Claim of Dora Weinberg*, Claim No. PO-3153, Dec. No. PO-1691.)

Valuation of uncommon items of property.—Occasionally it was necessary to place a value upon property of a type seldom encountered in other claims. A claim was presented for 115 railroad cars of which 64 were passenger cars, five were baggage and mail vans, and 46 were freight cars. After considering the original purchase price of the cars, the depreciation of the cars from the time of delivery through the war years and to the date of nationalization at the average rate of five per cent per annum, the condition of the cars when recovered by the Government of Poland after World War II and the amount expended by that government to put the cars in operating condition, the Commission concluded that when taken on January 1, 1947, the cars had a total value of \$254,971.03. (*Claim of Standard Car Finance Corporation*, Claim No. PO-10928, Dec. No. PO-8876.)

Another claim involved a health resort and spa located in the mountains at Kudowa Zdroj, powiat Klodzko, Poland, consisting of lake, meadow, and forest property improved by mineral water springs, several bath and hotel buildings, and other public facilities. The Commission determined its value from appraisals made in 1911 and 1930, financial statements of 1943, and its own independent investigation. (*Claim of Martin Polka, et al.*, Claim No. PO-9740, Dec. No. PO-8976.) The value of a claimant's interest in oil wells in Poland was based upon data regarding the postwar production of the wells, and the remaining terms of their leases for exploitation. (*Claim of George Morgan*, Claim No. PO-8320, Dec. No. PO-9311.)

Valuation of corporations and their assets.—Determination of the value of nationalized corporations was greatly facilitated where the claimant was the parent corporation, and balance sheets and reports of its nationalized subsidiaries were kept in the parent corporation's home office in the United States. Frequently, however, the records of business enterprises in Poland were lost or destroyed during World War II, and primary evidence of value was not available. The Commission's field office in Warsaw was able to assist in many cases by obtaining evidence of the registration of business firms, pictures of plants and descriptions of buildings, and sworn statements of former employees and customers of the enterprise. All evidence having a bearing upon value, from whatever source obtained, was weighed by the Commission in reaching its value determinations.

A claimant who was part-owner of a woolen manufacturing company which was nationalized in 1948 was unable to submit balance sheets or financial statements. The Commission extracted information from the *Rocznik Polskiego Przemyslu i Handlu—1938* (Yearbook for Polish Industry and Commerce for the year 1938) showing that the company was founded in 1857; that one of its major customers was the Government of Poland for the requirements of the Polish Army; that in 1934 the company employed 150 workers, operated 30 looms and 2,000 spindles, and used a power plant of 150 HP. Architect's plans, photographs and sketches of the plant disclosed the existence of nine brick buildings, one concrete house and eleven frame buildings. From this data a value was predicated. (*Claim of Eugenia A. Polak, Administratrix of the Estate of Leon Polak, Deceased*, Claim No. PO-8334, Dec. No. PO-3761.)

Many of the diverse problems of property evaluation were brought together in one decision in the *Claim of Socony Mobil Oil Company, Inc.*, Claim No. PO-2650, Dec. No. PO-1769, 19 FCSC Semiann. Rep. 30 (July-Dec. 1963). Land of approximately 271,000 square meters in the operating area of a refinery at Czechowice, Poland, was valued at \$0.60 per square meter, while an additional 294,000 square meters of land not in use for the industrial operations of the refinery was valued at \$0.30 per square meter. The 1938 purchase price of improved real property in Lodz, Poznan, and Bydgoszcz, Poland, was adopted as its value when nationalized on September 30, 1946, the Commission finding that this property had sustained no damage during World War II, and that depreciation in the intervening years had been offset by appreciation of real estate values in the area during the same period. In calculating the 1946 value of a refinery in Czechowice, the Commission determined from financial statements its value as of June 30, 1939; made appropriate deductions for depreciation in value of property items subject thereto, mitigated partially by appreciation of real property values in the same period; made deductions for damage sustained by bombing in 1944 and the postwar removal to the U.S.S.R. of certain machinery and equipment; and added sums representing plant reconstruction in 1944 and 1945. Product inventory was valued at 50% of the amount shown in a balance sheet drawn up by German managers as of January 31, 1945, inasmuch as postwar production was approximately 50% of wartime production. No award was made for

accounts receivable, advances, and other current and miscellaneous assets, since these were equaled in the balance sheet of January 31, 1945 by accounts payable. The amount included in the award for underground oil reserves was based upon the amounts invested by claimant in 1939, reduced by 10% per year for depletion and depreciation of equipment. After consideration of claimant's objections, the rate of reduction for depletion and depreciation was changed to 5% in the Commission's Final Decision. The Commission rejected a recommendation by claimant for evaluating reserves by analytical engineering methods as insufficiently reliable; but noted that such methods might be applicable elsewhere under conditions other than those existing as to the property under consideration.

Good will and prospective profits.—As in previous claims programs, portions of claims based upon loss of good will and prospective profits were denied in the Polish claims program as speculative and not generally allowable under international law. In a claim based upon the loss of a bar-restaurant in Warsaw on November 6, 1945, an award was made for the value only of the personal property located in the rented premises at the time of loss, and the claim for loss of good will and prospective profits was specifically denied. (*Claim of Wladyslaw Ziemniak*, Claim No. PO-5035, Dec. No. PO-2379, 20 FCSC Semiann. Rep. 15 (Jan.-June 1964).)

Awards reduced by amounts received on account of same loss.—Amounts received by a claimant from other sources on account of the same loss were deducted from awards under the Polish claims program. A claimant who inherited a one-fourth interest in land which was taken by the Government of Poland in 1956 when its total value after deduction of encumbrances was \$799,964.44, received an award of only \$141,972.98 for her one-fourth interest. The land had been confiscated from claimant's father by the German Government during World War II; and in a subsequent settlement with the father's heirs, the German Government had paid them the equivalent of \$232,072.50. Thus, the net loss with respect to the land was \$567,891.94. (*Claim of Gerda Kurnik*, Claim No. PO-1359, Dec. No. PO-8252, 23 FCSC Semiann. Rep. 44 (July-Dec. 1965).)

Where certain land was taken from claimants by the Government of Poland and other land was given them in replacement thereof, the Commission held that no loss was sustained within the purview of the Polish Claims Agreement of 1960 in the absence of evidence to establish that they had been inadequately compensated for the loss of their original land. (*Claim of Julius Sikorski, et al.*, Claim No. PO-7094, Dec. No. PO-7336.)

In another case, farmland measuring 2,272 square meters in Krakow, Poland, was expropriated on February 21, 1955 by the Government of Poland and claimant was awarded 1,288.22 zlotys as compensation therefor. Claimant contended that this award is merely token compensation compared to the true value of the property, and thus evidences a confiscation of the property. The Commission acknowledged that if a nationalization decree does not provide for compensation, or if the offer of compensation is inadequate or illusory, the nationalization law is in effect confiscatory; but held that claimant had not submitted evidence that

would afford a basis for the Commission to find that the compensation awarded to him was illusory or inadequate. To the contrary, information available to the Commission concerning the values of farmland in the area of Krakow did not so indicate. Accordingly, this portion of the claim was denied. (*Claim of Maks Lauterbach, et al.*, Claim No. PO-7406, Dec. No. PO-7357, 23 FCSC Semiann. Rep. 45 (July-Dec. 1965).)

Worthless stockholder claims.—Nationalization of a corporation did not necessarily cause a loss to the stockholders, since the stock may have been worthless at the time. Such was the case with the *Bank Związku Spolek Zarobkowych w Poznaniu*, which did not resume activity after World War II. It was liquidated by the Government of Poland on January 1, 1950, and the assets were found to be insufficient to satisfy the claims of depositors and other creditors, leaving nothing for distribution among stockholders. The claim of a stockholder was denied by the Commission, which stated that even if the liquidation of the bank be regarded as a nationalization or other taking by the Polish Government of the ownership interest represented by claimant's shares of stock, an award would not be warranted inasmuch as that ownership interest had no value at the time of liquidation. Since presumably the stock was of value at an earlier time, claimant obviously suffered a loss; but it was a loss caused by the economic collapse stemming from World War II and the occupation of Poland, and not from any action with regard to the insolvent bank for which the Government of Poland was responsible under the Agreement. (*Claim of John Moniak*, Claim No. PO-3107, Dec. No. PO-3174.)

Interest on awards.—The *Proach* decision is of interest also for its holding on the question of interest on awards issued under the Polish Claims Agreement of 1960. The Commission held that the payment of interest was in conformity with international law, custom, and tradition, and that equity and justice required it. The Commission concluded that interest should be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the date of the Polish Claims Agreement. The decision also illustrates that, as in other claims programs, the amount of an award was not limited to the amount claimed, but might be higher if warranted by the evidence of record.

In the Matter of the Claim of

Claim No. PO-10884
Decision No. PO-1536

**ESTATE OF OSCAR ROSENTHAL,
DECEASED**

Against the Government of Poland

Since Section 4(b), Title I of the 1949 Act, which governs the filing of claims under Polish Claims Agreement of 1960, is silent with respect to time limit for filing such claims, Commission may, in exercise of equitable jurisdiction under Section 4(a), accept claims filed after published deadline, March 31, 1962, for good cause shown.

DECISION AND ORDER

The Commission issued its Proposed Decision on this claim on September 4, 1963 denying it for the reason that it was not filed within the time limit prescribed for such filing by Commission regulations (as revised on July 15, 1963) § 531.1(c) and (f), which provided that claims under the Polish Claims Agreement of 1960 and Title I of the International Claims Settlement Act of 1949, as amended "shall be filed with the Commission on or before March 31, 1962."

Objections were filed to the decision and a hearing was held before the Commission, at which time Isolde Arcier and Margo Schoneman, daughters of the decedent testified and argument was presented by Samuel Herman, Esq., counsel for claimant.

Briefly, counsel urges that the Commission has jurisdiction under the statute and its inherent equitable power to grant an enlargement of the time limit within which claims may be accepted in claims programs governed by Title I of the Act. It is further argued that Section 4(b) of the Act requires the Commission to take two steps in order to establish an effective time limitation for filing claims governed by this title. It is stated that the Commission is required by Congressional mandate in Section 4(b) of the Act to (1) give public notice of the time when and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register; and (2) mail a similar notice to each person whose name appears in the appropriate records of the Department of State as having indicated an intention to file a claim with respect to a matter over which the Commission has jurisdiction under Title I of the Act. The contention is that the provisions in Section 4(b) concerning notice are equally mandatory upon the Commission and the failure to perform either of such steps renders ineffective the general time limitation as it applies to specific claims.

It is stated that the delay in filing this claim was unavoidable and therefore, excusable; and that the Commission should exercise its equitable jurisdiction to accept this claim as timely filed in accordance with 501.7(b) of its regulations which reads as follows:

(b) Enlargement. When by the regulations in this chapter or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discretion (1) with or without motion or notice, previous order or (2) upon motion permit the act to be done after the expiration of the specified period.

In this connection, statements have been presented and testi-

mony adduced to the effect that Oscar Rosenthal died on December 11, 1961; that prior to his death, from December 1959, he was neither physically nor mentally able to attend to his affairs; that at no time was there brought to his attention, either the existence of the Polish Claims Agreement or the claim filing periods published in the Federal Register; that he asserted claims for loss of property with the Department of State in 1948 and as late as 1949 communicated with the Department on the matters; and finally, that the decedent's daughters, who appeared at the hearing, were not advised of his efforts regarding the property in Poland until they checked through his various papers sometime after his death.

It is noted that Section 4(b) of Title I of the International Claims Settlement Act of 1949, as amended, which governs the filing of claims under the Polish Claims Agreement, is unlike Section 306 of Title III and Section 411 of Title IV of the Act, in that in the latter two provisions the Congress authorized the Commission to fix the period of time within which claims could be filed, however, in each there was an outside limitation on the period beyond which the Commission could not go. In Title I, no such outside limitation appears. Moreover, under Articles 1 and 4 of the Polish Claims Agreement, the Government of the United States agreed to accept the sum of \$40 million in full settlement and discharge of all claims of its nationals against the Government of Poland and that there would be no further espousal of claims which were covered by the Agreement.

Thus, in the absence of a statutory deadline for the filing of claims under Title I of the International Claims Settlement Act of 1949, as amended, and considering the finality of espousal of claims as provided for in the Polish Claims Agreement, it is concluded that the Commission has the authority as a matter of law and in accordance with principles of equity, to accept, where the situation warrants, claims under the Polish Claims Agreement which have been received subsequent to the deadline fixed by regulation published in the Federal Register.

The Commission feels compelled to reply to claimant's argument that it is under Congressional mandate to perform two separate acts before an effective limitation can be effected.

The Commission does not dispute that it is required to give public notice by publication in the Federal Register of the time when and the period of time within which, claims may be filed. Such notice was published in accordance with the statute. The Commission, however, must reject the argument that under Section 4(b) of the Act in order to effect a terminal date for filing it *must* give individual notice to persons whose names

appear in the records of the Department of State as having indicated an intention of filing a claim with respect to a matter on which it has jurisdiction under Title I. This matter has been considered by the Commission in claims under Titles III and IV and it has consistently held that the failure of a potential claimant to receive a notice as provided for in Section 4(b) of the Act does not render his claim timely. (See *Claim of Miloye M. Sokitch*, Claim No. IT-10957, Dec. No. IT-949-2; *Claims of Edward George Trousil and Barbara Wilhelmina Trousil*, Claim Nos. CZ-5004 and CZ-5005, Dec. No. CZ-1307.) In the case now before us, the Commission finds no basis for a departure from these decisions.

The sole question presented therefore is whether the circumstances in this case justify the Commission to invoke its inherent equitable jurisdiction under Title I of the Act and accept this claim as timely filed.

In view of the particular circumstances present in this claim, the Commission, in applying the principles of equity and justice as provided for in Section 4(a) of the Act, decides that good cause has been shown for the acceptance of this claim at this time. Accordingly, it is hereby

ORDERED that the Proposed Decision heretofore issued be and it is hereby set aside and that the claim be determined on the merits.

Dated at Washington, D.C.
March 18, 1964.

Procedures—Time for filing claims.—The Commission's jurisdiction to determine claims under the Polish Claims Agreement of 1960 stems from Section 4, Title I, of the International Claims Settlement Act of 1949, as amended. Section 4(b) provides that "The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register." The Commission published in the Federal Register of August 16, 1960, public notice that claims against the Government of Poland shall be filed with the Commission on or before September 30, 1961 (25 Fed. Reg. 7791 (1960)). Subsequently, the Commission extended the time for filing claims against the Government of Poland to and including March 31, 1962 (26 Fed. Reg. 9226 (1961)). The filing period expired on that date with the possibility of a later timely sub-

mission of completed claim forms within 30 days after the expiration of the filing period pursuant to an initial written indication of intention to file a claim received within 30 days prior to the expiration of the filing period (FCSC Reg., 45 C.F.R. § 531.2(f) (1961)).

Where a claim was filed by mail bearing the postmark date of April 13, 1962, and no previous written indication of claimant's intention to file a claim had been received by the Commission, the Commission denied the claim as not filed within the time prescribed for such filing. (*Claim of Esther Wegweiser*, Claim No. PO-10652, Dec. No. PO-714, 17 FCSC Semiann. Rep. 50 (July-Dec. 1962).)

The *Rosenthal* claim was filed on July 11, 1963, and was denied by Proposed Decision for the same reason. After an oral hearing, however, the Commission set aside the Proposed Decision and ordered the claim determined on its merits. Unlike Titles III and IV of the 1949 Act, in which the Congress imposed limits beyond which the Commission could not permit the filing of claims, Title I contains no statutory deadline for the filing of claims, and the only restriction was the Commission's own regulation. The Commission held that it had the authority as a matter of law and in accordance with principles of equity, to accept, where the situation warrants, claims under the Polish Claims Agreement of 1960 which were received subsequent to the deadline fixed by regulation published in the Federal Register. In the instant case Oscar Rosenthal's physical and mental inability to attend to his affairs prior to his death on December 11, 1961, and lack of knowledge on behalf of his daughters concerning the decedent's efforts regarding the property in Poland, was deemed good cause for the acceptance of the claim though not filed until July 11, 1963.

Joinder.—In some cases, persons who had not filed timely claims with the Commission were permitted to join in claims which had been filed on time and were based upon other interests in the same property. After a Proposed Decision had been issued in one claim, the two sons of the claimant informed the Commission that they had not filed timely claims for their interests in the same property because their interests had been mentioned in their mother's claim. In the Proposed Decision an award had been made to the mother for her interest only, since she was the only claimant. The Commission construed the letter from the two sons to be a petition to join in the claim, granted the petition, and made awards to all three claimants. (*Claim of Bertha Brotfeld, et al.*, Claim No. PO-5460, Dec. No. PO-7043.)

In another instance an award was made by Proposed Decision to the Administratrix of an estate, based upon partial ownership by the decedent of a business which had been nationalized in 1948 and real property which had been nationalized in 1956 and 1959. A brother of the decedent then filed a petition to join in the claim, stating that he had not become a United States national until 1952, and had failed to file a timely claim based upon his interests in the same property in the mistaken belief that all of it had been nationalized in 1948 when he was not a United States national. His petition was granted and he received an

award for the value of his interests in the property which was taken after he acquired United States nationality. (*Claim of Eugenia A. Polak, Administratrix of the Estate of Leon Polak, Deceased, et al.*, Claim No. PO-8334, Dec. No. PO-3761.) Petitions for permission to join in a claim could be granted even after issuance of a Final Decision on the claim. (*Claim of Solomon Neugarten*, Claim No. PO-8665, Dec. No. PO-5607.) In one instance the evidence submitted in support of the petition to join a new party claimant was used to establish the claim of the original parties as well as the petitioner. (*Claim of Gloria Matteoni, et al.*, Claim No. PO-7253, Dec. No. PO-3230.)

Burden of proof.—Under Commission regulations the claimant is the moving party and has the burden of proof on all issues involved in the determination of his claim. Nevertheless the Commission endeavored to assist claimants in establishing their claims. Thousands of claimants were offered assistance through personal interview in New York City at which representatives of the Commission received documentary evidence and testimony of claimants and witnesses, and information was furnished to claimants concerning the type of evidence appropriate for submission in support of a claim, and the sources from which it might be obtained. In many cases the Commission's field office in Warsaw succeeded in securing evidence which claimants had been unable to obtain.

However, where a claimant submitted no probative evidence in spite of Commission letters in which suggestions were offered, and failed to appear at a scheduled conference in New York City, the claim was denied for claimant's failure to meet the burden of proof. (*Claim of Leib Zawadzki*, Claim No. PO-1658, Dec. No. PO-963, 18 FCSC Semiann. Rep. 21 (Jan.-June 1963).) Also, where a claimant failed to respond to Commission correspondence and had submitted no evidence and insufficient information to provide the Commission with a basis for investigation, the claim was denied. (*Claim of Nancy B. Simon*, Claim No. PO-1437, Dec. No. PO-4, 15 FCSC Semiann. Rep. 31 (July-Dec. 1961).) The regulations of the Commission require that claims be filed on official forms signed by the claimants. A claimant's failure to comply with this requirement in spite of Commission letters suggesting submission of the required form, resulted in the denial of the claim. (*Claim of Bohdan Fedorowych*, Claim No. PO-4294, Dec. No. PO-1675.)

One claimant stated expressly that he did not wish to be reimbursed for the loss of his real property in Bydgoszcz, Poland, but requested that it be returned to him in its "original condition." In its decision the Commission held that it had no jurisdiction or authority to consider and determine claims for restitution of property taken by the Government of Poland, and denied the claim since it was beyond the power and jurisdiction of the Commission to grant the relief requested. Noting that claimant had submitted no evidence in support of his asserted ownership of the property or its taking by the Government of Poland, the Commission added that even if the claim were to be amended to include monetary compensation for the loss of the property, it necessarily would be denied for failure of proof of claimant's

ownership and taking by the Government of Poland. (*Claim of Ksawery Paprochi*, Claim No. PO-5733, Dec. No. PO-2915, 20 FCSC Semiann. Rep. 17 (Jan.-June 1964).)

Where a claimant had submitted no evidence in support of his claim and failed to respond to letters directed to his last known address, the second of which was returned with the notation "Return to sender—unknown," and the local Postmaster advised the Commission that claimant could not be located, the claim was denied for failure of proof and a copy of the Proposed Decision was mailed to claimant at his last known address, such mailing constituting service of the Proposed Decision in accordance with Section 501.3(d) of the Commission's regulations (FCSC Reg., 45 C.F.R. (1961)). (*Claim of Kiwa Herzberg*, Claim No. PO-9080, Dec. No. PO-3758, 20 FCSC Semiann. Rep. 32 (Jan.-June 1964).)

GENERAL WAR CLAIMS STATISTICS

Statutory authority: Title II of the War Claims Act of 1948, 76 Stat. 1107 (1962), 50 U.S.C. App. §§ 2017-2017p (1964).

Number of claims: 22,605.¹

Amount asserted: \$2,229,551,400.

Number of awards: 7,038.²

Amount of awards: \$334,783,073.78.³

Amount of fund: \$223,750,000.⁴

¹ 22,768 claims were filed, of which 163 were either withdrawn by claimants or consolidated with other claims.

² In addition, 362 awards on claims against Hungary previously granted under Section 303(1), Title III, of the International Claims Settlement Act of 1949 were recertified pursuant to Section 309(b) of the War Claims Act of 1948, and 1 award was granted under Title II of Public Law 87-846.

³ The awards mentioned under ² above totalled \$6,200,710.70, making a grand total of \$340,983,784.48.

⁴ The Commission is advised that the fund will be further augmented from other assets vested under the Trading With the Enemy Act.

In the Matter of the Claim of

Claim No. W-19156
Decision No. W-6211

GERARDO SOLIVEN

Under Title II of the War Claims Act
of 1948, as amended by Public Law 87-846

Claim must be owned by national of the United States continuously from date of loss to date of filing with Commission. Citizens of the Philippines were, as such, nationals of the United States only until July 4, 1946.

ORDER AND AMENDED PROPOSED DECISION

This claim under Section 202(a), Title II of the War Claims Act of 1948, as amended, for property losses sustained in the Philippines, during January 1942, was denied by a Proposed Decision dated July 14, 1965, for the reason that the property upon which it is based was not owned by a national of the United States on the date of loss, a requirement for an award imposed by Section 204 of the Act, claimant having become a naturalized citizen of the United States on July 13, 1951.

Claimant objected to the Proposed Decision by a letter post-marked August 6, 1965. That letter was received by the Commission on August 12, 1965. During the interim, the Proposed Decision was entered as the Final Decision of the Commission on August 10, 1965.

Claimant contends that his claim is covered by the statute for the following reasons:

1. At the time of his losses the Philippines were a territory of the United States and he was a national of the United States.
2. On May 6, 1946, a time when the Philippines was a territory as aforesaid, he became a member of the United States Navy.
3. Since May 6, 1946, he has remained a member of the United States Navy and has resided continuously in the United States.

Although claimant has not filed a petition to set aside the Final Decision in this matter, the Commission deems the issues presented by his objections to be of sufficient magnitude to warrant a reconsideration of that decision. It is therefore,

ORDERED that the Final Decision in this matter be set aside and that the Proposed Decision be amended as follows:

Section 204 of the Act provides as follows:

No claims shall be allowed under subsection (a), (b),
or (c) of Section 202 of this title unless the property

upon which it is based was owned by a national or nationals of the United States on the date of loss, damage, or destruction and unless the claim was owned by a national or nationals of the United States continuously thereafter until the date of filing with the Commission pursuant to this title. Where any person who lost United States citizenship solely by reason of marriage to a citizen or subject of a foreign country reacquired such citizenship before the date of enactment of this title, then if such individual, but for such marriage would have been a national of the United States at all times on and after the date of such loss, damage, or destruction until the filing of the claim, such individual shall be treated for all purposes of this title as having been a national of the United States at all such times. (76 Stat. 1109 (1962) ; 50 U.S.C. App. 2017c (1962).)

Section 201 of the Act, which appears under the caption, "Definitions," provides as follows:

As used in this title the term or terms—

(c) "National of the United States" means (1) a natural person who is a citizen of the United States, (2) a natural person who, though not a citizen of the United States owes permanent allegiance to the United States. . . . It does not include aliens. (76 Stat. 1107 (1962) ; 50 U.S.C. App. 2017 (1962).)

Claimant states that he was born on September 24, 1925, in Alos, Ala Minos, Pangansinan, Philippine Islands.

In the Treaty of Paris, 1898, Spain ceded the Philippines to the United States. By congressional enactment in 1902, inhabitants of the Philippines who were Spanish subjects on April 11, 1899 and who then resided in the Philippines and their subsequently born children became citizens of the Philippines and became entitled to the protection of the United States, excepting those persons electing to preserve their allegiance to Spain. (Act of July 9, 1902; 32 Stat. 692.)

As a result of that enactment citizens of the Philippines owed permanent allegiance to the United States.

With the hope of establishing an independent republic within ten years thereafter, Congress enacted the Philippines Independence Act in 1934. (48 Stat. 456 (1934).) Under that act the Philippines acquired a commonwealth status. Section 2(a) of the Act provided, "All citizens of the Philippine Islands shall owe allegiance to the United States." Citizens of the Philippines continued to owe permanent allegiance to the United States, even though the intention of Congress was to establish an independent republic.

The Commission therefore finds that at the time of his losses, claimant was a "National of the United States" within the mean-

ing of Section 201(c) of the Act. (See *Cabebe v. Acheson*, 183 F. 2d 795 (9th Cir. 1950).)

However, Section 204, Title II of the War Claims Act of 1948, as amended, not only requires that the property upon which a claim under Section 202(a) of the Act is based be owned by a national of the United States on the date of loss, but also requires that the claim resulting from such loss be owned by a national of the United States continuously from the date of loss until the filing of the claim with the Commission.

Citizens of the Philippines owed permanent allegiance to the United States and were nationals of the United States until Presidential Proclamation No. 2695, July 4, 1946 (11 Fed. Reg. 7517 (1946)) and the Treaty with the Philippines, July 4, 1946 (61 Stat. 1174 (1946)). On that date citizens of the Philippines became aliens. (See the *Claim of Gerardo P. Tiangco, Jr.*, Claim No. W-19990, Dec. No. W-6010.)

Claimant states that prior to July 4, 1946, viz., on May 6, 1946, he became a member of the United States Navy. That assertion raises the issue whether his enlistment in the United States Navy prevented his having become an alien on July 4, 1946.

Prior to July 2, 1946, citizens of the Philippines could be naturalized only by having served in certain branches of the United States military for a specified minimum period of time. (Act of July 2, 1946, (60 Stat. 416).) Section 303, Title III of the Nationality Act of 1940 provided that native-born Filipinos could become naturalized citizens of the United States only after "having honorable service in the United States Army, Navy, Marine Corps, or Coast Guard as specified in Section 324." Section 324(a) provided that a native-born Filipino who had served honorably in any of the specified branches of the military for a total of three years, without meeting the residence requirements of the Act, could be naturalized, if his petition for naturalization was filed while he was in the service or within six months thereafter. (54 Stat. 1137 (1940).)

The Commission finds that claimant had not become a naturalized citizen of the United States under the above-stated provisions of the Nationality Act of 1940 prior to July 4, 1946, the date of Philippine Independence and that as of July 4, 1946, claimant ceased to be a national of the United States and became an alien.

Claimant further states that he acquired United States nationality by naturalization on July 13, 1951. The Commission finds that during the period beginning July 4, 1946, to July 13, 1951, claimant was an alien.

The Commission therefore finds that this claim was not owned

by a national of the United States continuously from the date of loss until the date of filing with the Commission.

The Commission concludes that this claim is not compensable under Title II of the Act. Accordingly, it is denied.

Dated at Washington, D.C.

September 29, 1965.

Nationality requirements.—Under Section 202, Title II, of the War Claims Act of 1948, as amended by Public Law 87-846, the Commission acquired jurisdiction over four classes of claims; namely, claims for:

(a) loss or destruction of, or physical damage to property located in specifically named countries or described territories;

(b) damage to, or loss or destruction of, ships or ship cargoes;

(c) net losses under war-risk insurance or reinsurance policies or contracts, incurred in the settlement of claims for insured losses of ships; and

(d) loss or damage on account of the death, injury or permanent disability, or loss of personal property of a civilian national of the United States while a passenger on a vessel engaged in commerce on the high seas.

Section 204 provided that a claim would not be allowed unless the claimed property was owned by a United States national at the time of loss and unless the claim was owned continuously thereafter by a national of the United States until the date of filing with the Commission. However Section 204 concerned itself only with subsections (a), (b), and (c) of Section 202. Subsection (a) covered loss, damage, or destruction which occurred as a result of military operations of war or "special measures" during the period from September 1, 1939 to May 8, 1945 in the named European countries, and from July 1, 1937 to September 2, 1945 in territories occupied or attacked by the Japanese. Subsections (b) and (c) covered losses occurring between September 1, 1939 and September 2, 1945. Under subsection (d), the death, injury or loss of property must have occurred during the statutory period from September 1, 1939 to December 11, 1941, a time prior to the entry of the United States into World War II.

The *Soliven* decision illustrates the point that under Section 204 of the Act a claim, in order to be compensable under subsection (a), (b), or (c) of Section 202, must have been owned by a national or nationals of the United States continuously from the date of loss until the date of filing with the Commission. Pursuant to the provisions of the Philippine Independence Act of 1934 (48 Stat. 456 (1934)) the claimant, as a citizen of the Philippine Islands, owed permanent allegiance to the United

States, and thus qualified as a national of the United States as defined in Section 201(c) of the 1948 Act, even though not a citizen of the United States. This allegiance, and with it this United States nationality, was lost on July 4, 1946, the date when citizens of the Philippines became aliens. Since claimant did not thereafter acquire United States nationality until 1951, the continuity of United States national character of the claim was broken, and for that reason the claim was denied.

In an attempt to induce the Commission to alter its consistent interpretation of the requirement of continuous ownership of a claim by United States nationals, one claimant advanced the theory that it was sufficient under Section 204 that the claim have been "continuously owned" by persons who were nationals of the United States at some time, and that the requirement was satisfied by claimant's acquisition of United States nationality subsequent to the date when he inherited the claim. In rejecting this argument, the Commission stated that it consistently has interpreted the requirement of continuous ownership by United States nationals to mean that a claim must have been owned from the date of loss to the date of filing solely by persons, each of whom was a national of the United States at all times during his ownership of such claim. In clarifying the rectification of a previous misstatement of the international law principle of continuous nationality, Chairman Re of the Commission stated in a hearing before a Congressional Subcommittee that

The claim need not be owned continuously by the same American citizen, provided the property on which the claim is based is owned as of the time of loss and that the claim itself has national identity down to the time of filing. . . . This section, which is section 204, expressly requires that a property loss claim under section 202 can only be allowed if the property with respect to which the damage, loss, destruction, or removal was sustained, was American-owned at the time and that the claim arising therefrom never passed out of American hands from that time up to the date the claim was filed. (*Hearings on H.R. 5028 Before a Subcommittee of the House on Interstate and Foreign Commerce*, 87th Cong., 1st Sess. 93 (1961).)

Thus, ownership of a claim during the relevant period by one who is a nonnational at that time breaks the chain of continuous nationality of the claim, and the coincidence that the prior nonnational later attains United States nationality status does not cure the defect of the non-American status of the claim during the intervening period. The Commission found nothing in international law or the legislative history of the 1948 Act to warrant a contrary interpretation of Section 204, and denied the claim. (*Claim of Peter Kernast*, Claim No. W-9801, Dec. No. W-2107.)

Another claimant argued that the testator's United States nationality should govern the national character of the claim since the heir, a nonnational of the United States, could not claim his share immediately upon the death of the decedent. In

rejecting such argument, the Commission cited authorities as follows:

The person who had "the right to the award" must, it was further held, be considered as the real claimant by the Commission and whoever he might be, must "prove himself to be a citizen" of the government, by which the claim was presented. *Alvarez (United States) v. Mexico*, July 4, 1868, in Moore, *Arbitrations* 1353. See also *Wilt (United States) v. Venezuela*, December 5, 1885, *Id.* at 2246.

* * *

That the Department of State in its diplomatic support of claims looks to the citizenship of the real or equitable owner of the claim as distinguished from the nominal or ostensible owner appears from sections on corporations, administrators and assignees. Borchard, *The Diplomatic Protection of Citizens Abroad* 642-43 (1928).

(*Claim of Paraskewi Peters, Executrix of the Estate of Nick Peters, Deceased*, Claim No. W-2875, Dec. No. W-12346.)

Declaration of intention to become a citizen.—Another consistent holding of the Commission, in this and all previous claims programs, to the effect that a person does not become a national of the United States merely by filing a declaration of intention to become a United States citizen, was challenged in *Claim of Walter Ludwig Koerber*, Claim No. W-3917, Dec. No. W-1322. In denying the claim by Final Decision, the Commission stated its reasons as follows:

The effect of filing a declaration of intention, the naturalization hearing, and the taking of oaths between 1937 and 1943 is determined by the Naturalization Act of 1906 (34 Stat. 596 (1906)), as amended, and the Nationality Act of 1940 (54 Stat. 1137 (1940)).

The declaration of intention was provided in the Naturalization Act of 1906, as amended, to be merely one of the preliminary steps to becoming admitted as a citizen of the United States (34 Stat. 596 (1906); 8 U.S.C. § 408). A person was thereafter required to file a petition of naturalization (34 Stat. 597 (1906); 8 U.S.C. § 379), take an oath of allegiance (34 Stat. 597-598 (1906); 8 U.S.C. § 379), establish his residency, good character, and attachment to the Constitution (45 Stat. 1513-1514 (1929); 8 U.S.C. § 382), and have a final hearing in a court of competent jurisdiction (34 Stat. 599 (1906); 8 U.S.C. § 398). Although the claimant had filed a declaration of intention and taken an oath that "it is my intention in good faith to become a citizen of the United States of America" on September 22, 1937, he had not fulfilled the other statutory requirements necessary to becoming a citizen of the United States. The courts have not recognized that substantial compliance with the requirements of the Act would confer a special status of "de facto citizenship." Until all the

statutory requirements are fulfilled, and an order conferring citizenship is issued by a court having jurisdiction, the petitioner remains an alien. (*Johnson v. Nickoloff*, 52 F. 2d 1074 (9th Cir. 1931); *United States v. Uhl*, 211 F. 628 (2d Cir. 1914).)

To determine the significance of the declaration of intention, the taking of oaths, and the naturalization hearing subsequent to October 14, 1940, it is necessary to consider the provisions of the Nationality Act of 1940, as amended. This Act has substantially the same statutory requirements for the preliminary steps to becoming a citizen of the United States as the prior legislation. The mere filing of a declaration of intention and taking the required oath would not have conferred citizenship on the person (54 Stat. 1153-1158 (1940); 8 U.S.C. § 731-736). The hearing on the petition for naturalization (held on October 18, 1943) and the taking of the requisite oath, were also merely further necessary requirements of the Act which had to be completed prior to the claimant becoming a United States citizen (54 Stat. 1556-1557 (1940); 8 U.S.C. § 734). Although the claimant filed a declaration of intention and a petition of naturalization, and took certain oaths, he did not become a citizen of the United States until such time as a court of competent jurisdiction entered its order of naturalization. Until such act occurred, the claimant did not acquire the status of citizenship, de facto or otherwise, but rather remained an alien under both the Naturalization Act of 1906 and the Nationality Act of 1940. (*Petition of Moser*, 182 F. 2d 734 (2d Cir. 1950), rev'd on other grounds, 340 U.S. 41 (1951); *Johnson v. Nickoloff*, *supra*; *United States v. Uhl*, *supra*.)

A number of claimants under Title II of the 1948 Act had received previous awards under the Polish Claims Agreement of 1960, for nationalization, appropriation or other taking of their property by the Government of Poland which occurred after World War II, when they were nationals of the United States. Their awards had been reduced by the amount of war damage sustained by the property because such losses were not compensable under the Polish Claims Agreement of 1960, and the measure of compensation for nationalized property was its value at the time of taking. (See annotations to *Claim of Max Steinberg*, appearing at page 547.) Many of such claims, now filed under Title II of the 1948 Act for compensation for the war damage, were denied on the ground that at the time of such loss the property was not owned by a United States national.

In most of the cases in which Polish awards had been lowered by reason of war damage, the evidence of record in the Polish claim revealed only the extent of the war damage which had been sustained, and not the date or dates on which it occurred. Where a claimant had owned the damaged property during World War II but did not become a United States national until after May 8, 1945, it was not necessary to determine the date of dam-

age, because the property obviously had not been owned by a United States national at the time of any damage which may have occurred during the statutory period (September 1, 1939 to May 8, 1945), and denial of the claim was inevitable. (*Claim of Margaret M. Birstein*, Claim No. W-16129, Dec. No. W-10188.)

Evidence to establish dates of death of predecessors and dates of loss of property.—Frequently, however, the American interest in the claim first arose at some time during World War II, either by naturalization of the property owner, or inheritance by a United States national from a citizen of another country who died during the war. In such cases it was of primary importance to establish the exact date on which the war damage occurred, and often the date of death of the nonnational property owner as well. Various international organizations were sometimes of assistance to claimant in determining the dates of death of relatives. At times, the dates could be fixed precisely from statements of witnesses. More often, the Commission presumed that death occurred within a short time after transportation to any of the notorious extermination centers. The Commission's field offices were helpful in obtaining information regarding dates of death, and even more so in determining the dates on which damage or destruction of property occurred. The Commission also resorted to information available from American and other military sources regarding the dates on which certain localities were bombed, and the periods during which fighting occurred in particular areas. For instance, where a claimant established that his property in Wroclaw, Poland (formerly Breslau, Germany), had suffered war damage, and that he had been a United States national since before February 15, 1945, an award was made because the Commission had determined that virtually all of the wartime destruction of property in Wroclaw occurred during the siege of that city, extending from February 15 to May 6, 1945. (*Claim of Adolf Rosenberg, et al.*, Claim Nos. W-4325, W-4326, W-7375, Dec. No. W-21167.)

Nationality requirements in passenger claims.—The requirement of United States nationality on the date of injury in a claim under Section 202(d)(2), or the date of loss of property on a vessel under Section 202(d)(3) of the 1948 Act, was the basis for denial of the claim of a husband and wife, one of whom was injured and the other of whom lost personal property when the SS *Athenia* was sunk on September 3, 1939, at which time neither claimant was a national of the United States. (*Claim of Alexander Elefant, et al.*, Claim Nos. W-3428, W-3429, Dec. No. W-2943, 22 FCSC Semiann. Rep. 56 (Jan.-June 1965).)

Nationality requirements for corporations and stockholders.—Section 201(c)(3) of the Act provided that a corporation is a national of the United States if organized domestically, and if more than 50% of its outstanding capital stock or other proprietary or similar interest is owned directly or indirectly by natural persons who are nationals of the United States. Where, under this definition, a claimant corporation was a national of the United States on and after July 27, 1944, but not before, its claim based upon a loss of property in 1943 was denied. (*Claim of Transkrit Corporation*, Claim Nos. W-10761 and W-10103,

Dec. No. W-10133.) If the corporate owner of destroyed property was not a United States national, an American stockholder was entitled to file a claim based upon his direct ownership interest in the corporation, regardless of the percentage of ownership vested in the claimant or other United States nationals. However, if a claim was based on an indirect ownership, such as stock in a corporation which in turn owned an interest in another corporation which suffered a loss, it was entertainable only if at least 25% of the entire ownership interest in the corporation suffering the loss was vested in nationals of the United States at the time of loss, as required by Section 205(c) of the Act. (*Claim of Paula Scheyer, et al.*, Claim Nos. W-20521, W-21522, Dec. No. W-16462, 25 FCSC Semiann. Rep. 36 (July-Dec. 1966).)

Nationality requirements for religious organizations.—A number of claims under Title II of the 1948 Act were filed by religious organizations. Many such claimants had their origin long ago in parent organizations based in Europe with foundations or chapters in the United States. They had built schools, hospitals and churches in Europe and Asia, and their properties were damaged during World War II. Some of such claimants were still attached to a parent organization and others had become separate and distinct entities. Awards were made to many religious organizations which qualified as nationals of the United States within the meaning of the Act. (*Claim of the Congregation of the Mission of St. Vincent de Paul in Germantown*, Claim No. W-7010, Dec. No. W-16288; *Claim of the Sisters of Charity of St. Joseph's*, Claim No. W-10401, Dec. No. W-10055, 23 FCSC Semiann. Rep. 79 (July-Dec. 1965); *Claim of Board of International Missions of the Evangelical and Reformed Church*, Claim No. W-10379, Dec. No. W-18397; *Claim of Board of World Missions of the Reformed Church in America*, Claim No. W-18425, Dec. No. W-18198; *Claim of Domestic and Foreign Mission Society of the Protestant Episcopal Church*, Claim Nos. W-22347, W-14209 through W-14267, Dec. No. W-17839.) On the other hand, in a claim filed by The Felician Sisters, O.S.F. of Detroit on behalf of the international Congregation of the Sisters of St. Felix of Cantalice, the Commission found that the subject property was owned by the international Congregation, and denied the claim by Proposed Decision on the ground that the Congregation was not a national of the United States. At an oral hearing it was argued that more than 50% of the members of the international Congregation were nationals of the United States, and that the word "organized" as used in Section 201(c) of the Act refers only to corporations or partnerships and not to unincorporated bodies or other entities. The Commission held, however, that the term "congregation" is a term of ecclesiastical law, and that the law under which a congregation is organized is the Canon Law which is clearly not the law of "the United States, or of any State, the Commonwealth of Puerto Rico, the District of Columbia, or any possession of the United States" as required by Section 201(c) (3) of the Act. The claim was denied by Final Decision. (*Claim of Congregation of the Sisters of St. Felix of Cantalice*, Claim No. W-2850, Dec. No. W-18444.)

**THE CONGREGATION OF THE
HOLY GHOST AND OF THE
IMMACULATE HEART OF MARY**

Under Title II of the War Claims Act
of 1948, as amended by Public Law
87-846

American branch of international religious organization had no ownership interest in property owned either by such international religious society or by an independent foreign branch thereof. Such owner of property is not a trustee for benefit of other branches or individual members thereof.

PROPOSED DECISION

This claim for \$1,044,591.00, under Title II of the War Claims Act of 1948, as amended, is based upon the asserted loss of personal property and damage to improved real property located in Poland and Germany. Claimant, THE CONGREGATION OF THE HOLY GHOST AND OF THE IMMACULATE HEART OF MARY, was incorporated under the laws of the Commonwealth of Pennsylvania and its charter was recorded on February 1, 1886.

Section 202 of the Act directs the Commission to determine the validity and amount of claims of nationals of the United States for:

(a) loss or destruction of, or physical damage to, property located in . . . Germany . . . Poland . . . which loss, destruction, or physical damage occurred during the period beginning September 1, 1939, and ending May 8, 1945 . . . *Provided further*, That such loss, destruction, or damage must have occurred, as a direct consequence of (1) military operations of war or (2) special measures directed against property in such countries or territories during the respective periods specified, because of the enemy or alleged enemy character of the owner, which property was owned, directly or indirectly, by a national of the United States at the time of such loss, damage or destruction . . . (76 Stat. 1107 (1962); 50 U.S.C. App. 2017a (1964).)

Section 204 of the Act provides as follows:

No claim shall be allowed under subsection (a), (b), or (c) of section 202 of this title unless the property upon which it is based was owned by a national or nationals of the United States on the date of loss, damage, or destruction and unless the claim was owned by a national or nationals of the United States continuously

thereafter until the date of filing with the Commission pursuant to this title (76 Stat. 1109 (1962); 50 U.S.C. App. 2017c (1964).)

Section 205(b) of the Act provides as follows:

A claim under section 202 of this title, based upon a direct ownership interest in a corporation, association, or other entity which suffered a loss within the meaning of said section, shall be allowed, subject to other provisions of this title, if such corporation, association, or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant in any such claim. (76 Stat. 1110 (1962); 50 U.S.C. App. 2017d (1964).)

From the record it appears that claimant corporation is a part of the American Province of the Congregation du Saint-Esprit (Congregation of the Holy Ghost). The President of the claimant has certified that at the time of filing the claim and at all times since its organization, more than 50% of the members of the corporation have been nationals of the United States.

The Congregation of the Holy Ghost originated in France in or about 1734 and was recognized as an exempt organization in 1824 by the Holy See. In 1863, a Province was founded in Germany and in 1872, a Province was founded in the United States. Thereafter, in 1921 the Polish Province was founded, apparently through the efforts of the American Province. Claimant corporation is one of the Houses making up the American Province and asserts its claim for losses sustained to ecclesiastical property in Poland and in Germany.

In proof of ownership of the property which is the subject of this claim, claimant has submitted the following:

1. Kujawska Street No. 117 in Bydgoszcz, Poland—Protocol dated April 18, 1950 whereby the Government of Poland took this property. The Protocol states that the property was owned by the Congregation of the Holy Spirit.

2. Dworcowa Street No. 14 in Puszczykowko, Poland—Protocol dated August 8, 1950 whereby the Government of Poland took this property. The Protocol states that the property was owned by the Congregation of the Holy Spirit.

3. Chelszczanka—Wloki, Poland—Protocol dated August 12, 1950 whereby the Government of Poland took this property. The Protocol states that the property was owned by the Congregation of the Holy Spirit.

4. Victoria Strasse 23 in Cologne, Germany—Contract of sale and extract from the Register of Deeds of Cologne lists the ownership of this property as being in Missionsgesellschaft der Väter vom hl. Geiste, Gesellschaft mit beschränkter Haftung in

Knechtsteden (Mission Society of the Fathers of the Holy Spirit Ltd., Knechtsteden).

5. Victoria Strasse 19 in Cologne, Germany—Decision of the Revenue Office of Cologne setting a real estate purchase tax dated April 19, 1940 states that a sales contract was entered into between the seller and the buyer, Missionsgesellschaft der Väter vom heiligen Geist G. m. b. H. (Mission Society of the Fathers of the Holy Spirit Ltd.) on March 17, 1939.

6. Victoria Strasse 21 and Altengraben Strasse 17 in Cologne, Germany—Notarial contract and transfer dated January 24, 1930 whereby ownership was transferred to Missionsgesellschaft der Väter vom heiligen Geist, Gesellschaft mit beschränkter Haftung in Knechtsteden (Mission Society of the Fathers of the Holy Spirit Ltd., in Knechtsteden).

7. House Schoenblick in Heimbach (Eifel) Germany—Statement dated March 13, 1914 from the donor of this property to the effect that the house was transferred to the Archepiscopal See of Cologne for the unrestricted use of the Mission House of the Fathers of the Holy Spirit at Knechtsteden.

8. Broichweiden, Germany—Extract from the Register of Deeds lists ownership of this property in Missionsgesellschaft der Väter vom hl. Geist, Gesellschaft mit beschränkter Haftung zu Knechtsteden, Zweigniederlassung Broich (Mission Society of the Fathers of the Holy Spirit, Ltd. Knechtsteden, Branch of same in Broich).

9. Speyer, Germany—Extract from the Register of Deeds lists ownership in Missionsgesellschaft der Väter vom heiligen Geist, Gesellschaft mit beschränkter Haftung mit dem Sitze Knechtsteden (Mission Society of the Fathers of the Holy Spirit, Ltd., with the seat in Knechtsteden).

10. Knechtsteden, Germany—There is no documentation of ownership of this property. The file includes statements as to damages but reference is made to the "Mission House in Knechtsteden."

11. Schildergasse 59 61 in Cologne, Germany—The file contains no documentation of ownership. There is merely an appraisal of the property contained in the same letter of appraisal concerning the other German property.

The record also includes itemized listings of personal property located at the above-named locations, appraisals of value, photographs, statements of war damage and pertinent sections from Canon Law, and the Constitution of the Order.

The threshold question posed by this claim is the question of ownership of the property which is the subject of the claim on the date of loss, damage or destruction. The claimant corporation

asserts that it is the proper party claimant in the alternative; first, as having an ownership interest in the property which was lost, damaged or destroyed and secondly, in a representative capacity for all those persons having United States nationality, who constitute the membership of the Congregation of the Holy Ghost as a whole.

GERMANY

On July 20, 1933 the German Government and the Vatican signed a Concordat which provides in part:

Article 1. The German Reich guarantees the freedom of the profession and public practice of the Catholic religion.

It recognizes the right of the Catholic Church, within the limits of the law that applies to all, to regulate and administer her own affairs independently, and, within the framework of her competence, to publish laws and ordinances binding on her members.

Article 13. Catholic parishes, parish and diocesan associations, Episcopal Sees, bishoprics and chapters, religious orders and congregations, as well as institutions, foundations, and property which are under the administration of ecclesiastical authority, shall retain or acquire legal competence in the civil domain according to the general prescriptions of the law of the State. They shall remain corporations under public law insofar as they have been such hitherto; the others may be granted the same rights under the law that applies to all.

It is agreed that the right of the Church to levy taxes remains guaranteed.

Article 17. The rights of ownership and other rights of the corporation under public law, institutions, foundations, and associations of the Catholic Church in their property are guaranteed according to the general laws of the State.

Buildings used for religious services may not be destroyed for any reason whatsoever without the previous agreement with the ecclesiastical authorities concerned.

Article 33. The matters pertaining to ecclesiastical persons or ecclesiastical affairs, which have not been dealt with in the foregoing articles, will be regulated for the ecclesiastical sphere in accordance with applicable Canon Law.

Should any difference of opinion occur in future regarding the interpretation of application of a stipulation of this Concordat, the Holy See and the German Reich will effect a friendly solution by mutual agreement.

Claimant has also submitted pertinent portions of the Constitution of the Congregation which was approved and accepted by the Holy See on March 11, 1848 and provide as follows:

226. According to our Rules, the Congregation, the provinces and the houses, as such, can possess movable and immovable goods to provide for the maintenance of the members of the Congregation and for the support and development of its works (Can. 531).

All these goods are in the category of ecclesiastical property.

* * * * *

234. As far as possible, each province and each community within the province, shall be self-supporting and provide for itself the necessary resources. Nevertheless, if a house were temporarily in need, the province would help, and, in default of the province, the Congregation, but on condition that reimbursement be made as soon as circumstances permitted.

* * * * *

242. To prevent all misunderstandings, it is understood that the gifts made to a professed member are regarded as made to the Congregation itself, or to the works confided to it unless the contrary is explicitly stated or is evident from the circumstances.

Whatever the professed members may acquire for services rendered or through their own industry, in the missions as everywhere else, is also part of the common property. This may take the form of Mass stipends, remunerations and emoluments, allowances, savings and other profits. They cannot, therefore, without offending against the vow of poverty, keep anything whatever for themselves, or dispose of it nor even refuse to accept what is their due without a special permission (Can. 580, Sec. 2).

Claimant asserts that, in accordance with the afore-cited sections of the Congregation's Constitution and the Concordat, the Commission must conclude that notwithstanding the ownership of record of the property, the beneficial owner of the property is the Congregation as a whole and that the American Province by virtue of its adherence to the discipline of the Order of the Congregation of the Holy Ghost has an ownership interest in the property which claimant corporation asserts on behalf of the entire American Province.

It is clear from the cited sections that the individual Houses and Provinces have canonical authority to possess movable and immovable goods and that the property in Germany which is the subject of this claim was owned by the *Missionsgesellschaft der Väter vom heiligen Geist, G. m. b. H.* (Mission Society of the Fathers of the Holy Spirit, Ltd.), the corporate body of one of the Houses of the German Province.

From the foregoing, the Commission is constrained to find that claimant corporation, **THE CONGREGATION OF THE HOLY GHOST AND OF THE IMMACULATE HEART OF MARY,**

incorporated under the laws of the Commonwealth of Pennsylvania, had no ownership interest in the property in Germany which is the subject of this portion of the claim.

POLAND

Claimant corporation asserts an ownership interest in the property located in Poland on behalf of the entire American Province asserting such ownership upon the historical basis that the American Province organized the Polish Vice-Province which was supported in large part by American funding. It is clear from the afore-cited sections of the Congregation's Constitution that each Province and each Community is intended to be self-supporting and if that is not so then whatever outside funding is obtained is reimbursable—clearly a loan and not ownership.

Claimant corporation urges that it has an ownership interest in the property pursuant to section 205(b) of Public Law 87-846 in that the American Province adheres to the discipline of the Congregation of the Holy Ghost and that such adherence constitutes an ownership interest in an entity which was not a national of the United States on the date of loss.

The property in Poland is assertedly recorded in the name of the Congregation of the Holy Spirit without designation as to the Province. Claimant corporation urges that the record owner be construed to mean that the Congregation as a whole is the owner of the property. It is argued that if this be so, then claimant corporation, a House of the American Province of the Congregation has an ownership interest therein. The file contains a recital of Article 16 of the Constitution (*ibid.*) which provides:

16. The Congregation is composed of clerics and lay religious who consecrate their lives to its works.

From the foregoing, it appears that the membership of the Congregation is not composed of the Provinces or of the Houses of the Provinces but rather of the individuals espousing the discipline of the Congregation of the Holy Ghost.

Accordingly, the Commission finds that no House or Province has an ownership interest in the property of the Congregation as a whole and concludes that the portion of the claim based on this argument is not compensable under the Act.

In the alternative, claimant corporation asserts itself, under Section 205(b) of the Act, in a representative capacity as claimant for the rights of each of the members of the Congregation who were nationals of the United States on the date of loss. Section 205(b) of the Act permits shareholders in a foreign corporation or entity to make claim in accordance with their percentage

of ownership interest in any losses sustained by the foreign corporation or entity. It appears from the Constitution of the Congregation of the Holy Ghost that a member of the Congregation cannot acquire or hold any property for his own benefit, neither may he without specified authorization perform any act of ownership of the property of a Province. "Thus ownership of the property is vested in the Congregation for the benefit of all its members pursuant to its Constitution." (Page 9, April 25, 1966, supplemental brief of claimant.)

The Commission finds that with respect to the Congregation of the Holy Ghost, the members of the Congregation having undertaken vows of poverty, are not the beneficial owners of any portion of the property of the Congregation. Accordingly, the Commission concludes that the alternative claim based on the interest of the individual American nationals in the property of the Congregation of the Holy Ghost, is not compensable under the Act.

For the foregoing reasons this claim is denied. The Commission deems it unnecessary to consider other elements of this claim.

Dated at Washington, D.C.

October 19, 1966.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on October 19, 1966, denying it on the ground that the claimant had no ownership interest in the property which was the subject of the claim and had no ownership interest in the entity which owned the property, neither in its corporate capacity nor in its asserted representative capacity for those of its members who were nationals of the United States on the date of loss.

Claimant objected to the Proposed Decision, submitted a brief in support of the objections and requested an oral hearing which was held on January 4, 1967. A brief *amicus curiae* was also filed by counsel for the Sisters of Divine Providence (see Claim Nos. W-8482, W-8483 and W-8484, Decision No. W-19338). Argument was made by claimant's counsel as well as by *amicus* counsel. Claimant introduced the testimony of the Reverend John J. McGrath, LL.B., J.C.D., recognized by the Commission as a scholar of Canon Law.

The threshold question posed by this claim is the question of ownership of the property which is the subject of the claim on the date of loss, damage or destruction.

The first part of this claim is based upon the asserted loss and destruction of improved real property and personal property located in Germany and recorded in the name of a German House of the international Congregation of the Holy Ghost and of the Immaculate Heart of Mary. Claimant is an American House of the same Congregation.

The remaining portion of this claim is based upon the asserted loss and destruction of improved real property and personal property located in Poland and recorded in the name of the Congregation of the Holy Ghost without designation as to Province or House.

Under Title II of the War Claims Act of 1948, as amended, the property lost, damaged or destroyed, which is the subject of a claim, must be owned by a national of the United States at the time of such loss. The Commission has made awards to religious organizations that have qualified as nationals of the United States within the meaning of that Act. Illustrative of those awards are the following: *Claim of the Congregation of the Mission of St. Vincent de Paul in Germantown*, Claim No. W-7010, Dec. No. W-16288; *Claim of the Sisters of Charity of St. Joseph's*, Claim No. W-10401, Dec. No. W-10055; *Claim of Board of International Missions of the Evangelical and Reformed Church*, Claim No. W-10379, Dec. No. W-18397; *Claim of Board of World Missions of the Reformed Church in America*, Claim No. W-18425, Dec. No. W-18198; and *Claim of Domestic and Foreign Mission Society of the Protestant Episcopal Church*, Claim Nos. W-22347, W-14209 through W-14267, Dec. No. W-17839.

In each of the claims cited, however, the facts warranted a finding that the property was owned by the claimant, a national of the United States at the time of loss. Such a finding is not possible in this claim as the properties in Germany and Poland were owned by nonnationals of the United States.

A number of theories with respect to the ownership of the property have been propounded by claimant's counsel and by *amicus* counsel in their arguments at the oral hearing, as well as in their voluminous briefs and memoranda, which were of considerable assistance to the Commission in its determination of this claim.

Thus, the claimant contends that the juridical person holding title to the property holds bare legal title as a trustee, and that the beneficiaries of that trust are the members of the international Congregation each of whom has an equal interest therein.

It is contended that such an interest is tantamount to an ownership interest and that the claim as filed by claimant is in its representative capacity for each of its members who were nationals of the United States at the time of loss.

In support of that contention claimant has cited *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), a leading case in the law of Religious Societies which states:

... where property is conveyed for the use or benefit of a designated church or religious society . . . such property, by operation of the law of trusts, is held for the use of such society, subject to the entire body or system of doctrines, rules, or principles, whether of faith, form, or order, held and recognized by the society at the time of conveyance

In the instance of a Roman Catholic religious society, the body of rules which governs the holding of property is encompassed in the Canon Law and in the Constitution of the Congregation. Under Canon Law the ownership of temporalities is specifically permitted not only by the religious institute itself, but also by its provinces and houses unless excluded by the rules and constitution of the institute. (Abbo & Hannan, *The Sacred Canons*, Canons 531 and 1499 (2d rev. ed. 1960).) It is also clear that the Congregation of the Holy Ghost gives to its Provinces and Houses the right of ownership in movable and immovable goods (Section 226, Constitution of the Congregation of the Holy Ghost). The right of such ownership, coupled with the fact of title recorded in the juridical persons which acquired and held the property in this claim, compel the Commission to conclude that the property in Germany was owned by the *Missiongesellschaft der Väter vom heiligen Geist G. m. b. H.* (Mission Society of the Fathers of the Holy Spirit, Ltd., the corporate body of one of the Houses of the German Province of the Congregation), and the property in Poland by the *Kongregacja Duchy św* (Congregation of the Holy Ghost). The Commission concludes, therefore, that claimant, although a national of the United States, did not own the property which is the subject of this claim at the time of loss.

Although the Commission finds from all of the evidence of record that the professed cleric possesses certain rights, spiritual and temporal, which he acquires by virtue of his membership in a congregation, the totality of his temporal rights, generally, may be stated as the right to be supported in accordance with the Rule of the Congregation as long as he remains a member thereof.

The Constitution of the Congregation of the Holy Ghost conveys to its members no interests in its property or that of any of its Houses or Provinces which can be sold, encumbered, transferred or inherited—rights incident to the ownership of property.

Moreover, no act of ownership, management or administration concerning such property can be performed by its members without regular authorization (Paragraph 243, Constitution of the Congregation of the Holy Ghost). It is also acknowledged that a member of a religious institute has no rights in the property of that institute should he voluntarily depart or be dismissed.

At the oral hearing, Father McGrath testified that the devolution of ecclesiastical property under Canon Law is upward to the next superior ecclesiastical juridical person rather than downward to the individual religious member (Canon 1501). This may be regarded as further evidence of the absence of any proprietary right in members to the property of a congregation. It was also established from Father McGrath's testimony that the Pontiff, upon dissolution of a congregation, has plenary power to dispose of that congregation's property for a purpose similar to that which the extinct congregation had espoused. It is clear, therefore, that even in the most extreme circumstance, Canon Law provides for the retention of ecclesiastical property for the execution of a purpose rather than for the benefit of persons.

The Commission is impelled to conclude from all of the above evidence that the relationship of congregation to member does not parallel the relationship of trustee to beneficiary such as would give rise to a compensable claim under Section 202(a) of the Act, and that the individual house or province, or the congregation of which it is part, is the owner both legally and beneficially of property recorded in its name.

The memoranda submitted by *amicus* counsel suggest yet another theory based upon Section 205(b) of the Act. It is contended that the individual members have an interest in the Congregation which is comparable to that of a share holder under civil corporate law. *Amicus* counsel, in very detailed and well documented memoranda, cites a number of cases and writings on the civil law of associations in support of his contention. The Commission finds that although the law of associations may have some analogy, it is not controlling and that the law of Religious Societies is the law which is applicable to the instant situation.

Amicus counsel cited the case of *Goesele v. Bimeler*, 55 U.S. (14 How.) 589 (1852), which involved a religious sect having several elements in common with the claimant, such as a belief in and subscription to a theory of community property and a renunciation of individual ownership of the property acquired by the labors of the membership. In that case, the Supreme Court stated:

The whole policy of the Association was founded on a principle which excluded individual ownership. Such an

ownership would defeat the great object in view, by necessarily giving to the Association a temporary character. If the interests of its members could be transferred, or pass by descent, the maintenance of the community would be impossible. In the natural course of things the ownership of the property in a few years, by transfer and descent, would pass out of the community into the hands of strangers, and thereby defeat the object in view.

By disclaiming all individual ownership of the property acquired by their labor, for the benefits secured by the articles, the members give durability to the fund accumulated, and to the benevolent purposes to which it is applied

It is also pertinent to note that the Court in the *Goesele* case stated:

While they [the members] remained in the Society, under its general regulations, the products of their labor on the land and otherwise were applied, so far as necessary, to their support. Beyond this, they were to have no interest in the land or in the personal property

The testimony of Father McGrath renders it clear to the Commission that the Congregation of the Holy Ghost and of the Immaculate Heart of Mary is governed by the same principle of community property, coupled with a vow of poverty, as were the Separatists in the *Goesele* case. The Commission finds that the conclusions reached by the Supreme Court in the *Goesele* case are applicable here.

Additionally, it should be noted that claimant's contention as to the ownership interest of members in a religious association appears inconsistent with the exempt status of such associations under Section 501(c) of the Internal Revenue Code and Treasury regulations. See 26 C.F.R. § 1.501(c) (3)-1(b) (4) (1966).

Based upon all the evidence of record, argument of counsel, expert testimony and all of the submissions, the Commission finds that claimant had no ownership interest in the property which is the subject of this claim and that the United States nationals who are members of the Congregation had no ownership interest in the property which would be compensable under Section 202(a) of the Act.

The Commission further finds that the United States nationals who are members of the Congregation had no ownership interest in the Congregation which would be compensable under Section 205(b) of the Act. Accordingly, it is

ORDERED that the Proposed Decision be and it herewith is affirmed.

Dated at Washington, D.C.

February 23, 1967.

Ownership of property.—The instant claim is illustrative of the sort of problem encountered in connection with ownership of property by religious organizations. The claimant organization, incorporated in Pennsylvania, was a part of the American Province of the Congregation du Saint-Esprit, an international organization which originated in France. The claim was based upon losses of ecclesiastical property in Germany and Poland. The Commission found that the property in Germany was owned, both legally and beneficially, by one of the Houses of the German Province; that the property in Poland was owned, both legally and beneficially, by the parent Congregation du Saint-Esprit; and that neither the claimant organization nor individual members who were United States nationals had any ownership interest in the property in either country.

Another claimant advanced a theory of ownership by commingling, in an effort to establish a non-record ownership interest in property in Poland to which title was recorded in an international religious congregation. It was asserted that upon entry into the order, each individual sister brought with her a dowry which must be returned to her when and if she leaves the order. It was urged that since these dowries were comingled with other funds of the congregation, each individual sister, many of whom were United States nationals, acquired an ownership interest in the property of the congregation tantamount to a stockholder's interest. The record revealed that dowry payments were made to the local house or province and not to the "international order or congregation." Such contributions were not held by the international order. If a sister was transferred from one province to another, the dowry was likewise transferred. After full consideration of this argument and review of the entire record, including pertinent Canon Law, the Constitution of the Congregation and excerpts from the financial accounts of the Congregation, the Commission held that claimant had failed to establish that individual sisters acquired any ownership interest in the property of the international Congregation. (*Claim of The Congregation of the Sisters of St. Felix of Cantalice*, Claim No. W-2850, Dec. No. W-18444.)

One claimant advanced a theory of beneficial ownership of property by reason of financial contributions. An international religious society was divided into seven regions, each containing one or more communities. Each of the communities was empow-

ered to acquire, own, and dispose of real and personal property, and the property claimed was owned by the communities organized and existing under the laws of China and Burma. Claimant asserted a beneficial ownership of the subject property predicated upon the fact that through the payment of quotas imposed by the Superior General, as well as other individual gifts, claimant bore at least 50% of the burden of financing the missions in China and Burma. The Commission held that bearing a large portion of the financial burden of the missions, in and of itself, did not confer upon the claimant organization an ownership interest in the property of the missions; and that an organization acquires no ownership interest in the assets of an affiliate solely by virtue of financial contributions, even if the financial aid is substantial in extent and is in the nature of assessments from a superior governing body. (*Claim of St. Columban's Foreign Mission Society*, Claim No. W-7015, Dec. No. W-18894.)

In other claims, valid transfer of ownership of real property abroad to religious organizations qualifying as nationals of the United States was established by evidence of record, and the subsequent loss thereof was the basis for awards. In one such instance, an award of \$2,080,421.15 was granted for property lost in Kanchow, Lungnan, Nankang, Pinglu, Sinfeng, Tahoukiang, Taiholi, Tangkiang, Tayu, and Yutu, China. (*Claim of The Congregation of the Mission of St. Vincent de Paul in Germantown*, Claim No. W-7010, Dec. No. W-16288.) In another, \$600,525.00 was awarded for property lost in 22 Chinese communities. (*Claim of The Society of the Congregation of the Mission of St. Louis, Missouri*, Claim No. W-10657, Dec. No. W-20307.)

Law of situs governing ownership of real property.—The contention that the provider of funds for the purchase of property might be recognized as the owner although title was recorded in another, was advanced by private individuals also. Where an award was made to one claimant for the loss of his one-half interest in real and personal property in Germany, and the claim for the other one-half interest was denied because the owner was not a national of the United States on the date of loss, the first claimant objected and submitted evidence to establish that he was sole owner of the personalty and that the realty had been purchased entirely with his funds. In its Final Decision the Commission made an award for the full value of the personalty, but only one-half of the realty, holding that under the *lex loci rei sitae* it was bound by the entry in the land register (*Grundbuch*) showing that each claimant owned a one-half interest. (*Claim of Carl George Kundman, et al.*, Claim No. W-4750, Dec. No. W-4241.)

An organization incorporated in North Carolina donated large sums of money for the benefit of the community of Karyae, Greece, including the construction of a school, clock tower, and water works, and their reconstruction after World War II. A review of the land records of Karyae disclosed no entries either before or after the war in the name of the claimant organization. The Commission was advised that other associations of former Karyae residents had made substantial donations for reconstruction purposes but had asserted no title to any property. The Commission ascertained from interviewed residents of Karyae that the prevailing opinion was that the subject property be-

longed to the community of Karyae. The Commission held that claimant had failed to establish its ownership of the subject property. (*Claim of Adelphtis Arahoviton "Karyae,"* Claim No. W-123, Dec. No. W-17737.)

An entry in the land register of Solingen, Germany, showing title to real property in a person other than the claimant, was held conclusive as to ownership of the property on the date of loss, although claimant asserted that the property had been sold by his former wife in violation of a separation agreement and the sale had been wrongfully ratified by his German attorney. The claim was denied, without prejudice to any rights claimant might have under German law against the purchasers, his attorney, or his former wife. (*Claim of George Gerung,* Claim No. W-949, Dec. No. W-12863.)

A claimant who constructed a four-story apartment house on land owned by her husband in Zagreb, Yugoslavia, was held to have been the owner of the improvements at the time they sustained damage during World War II, although the land register indicated only that the land was owned by the husband, and he was not a national of the United States. The Commission found that under Yugoslav law, if a person erects a building on land owned by another, without the knowledge and against the will of the landowner, the building belongs to the owner of the land; but a person acting in good faith and with the landowner's consent does not lose title to the improvements. Claimant had acted openly and with her husband's consent, acquiring building permits from the appropriate authorities in her own name, and was granted an award as the owner of the building. (*Claim of Melitta J. Peselj-Cosme,* Claim No. W-9007, Dec. No. W-8729.) On the other hand, where permanent, nonmovable improvements were made by a claimant to leased real property in Warsaw, Poland, the Commission applied the general rule that in the absence of express stipulations to the contrary, if any improvements erected by the tenant cannot be removed without considerable injury to the premises, such improvements belong to the owner of the fee. (*Claim of Eastman Kodak Company,* Claim No. W-9603, Dec. No. W-20954.) The same conclusion was reached by the Commission in a claim involving a lease agreement containing the right to construct and maintain show windows and a glass covering over a passageway known as Ebenboeck located at 2 Seidlingerstrasse in Munich, Germany, which resulted in a substantial improvement to the building at that address. The Commission held that under German law the improvements made under the lease became a permanent fixture and part of the realty owned by the lessor. (*Claim of Alfred Bach, et al.,* Claim No. W-6234, Dec. No. W-21528.)

Beneficial interests in property.—Beneficial ownership occasionally was the basis for awards for losses of interests in business enterprises. Where the registered owner of the participation shares in a bronze pipe manufacturing company was found to have held them as trustee for claimant's father, who died in 1941 leaving his entire estate to claimant, an award was made to claimant for losses suffered by the enterprise as a result of military operations in April 1945. A 1938 sale of the enterprise by the trustee to a German concern was found to have been made under

duress, and therefore did not divest claimant's father of his rights as beneficial owner. However, the size of the enterprise had been increased considerably by the acquisition of new properties during the period of German operation, and much of the new investment had been financed by the German purchaser. The Commission calculated that claimant's equity amounted to 58.7% of the value of the assets at the time of loss, and limited his award to that amount, although his father had been beneficial owner of 100% of the enterprise before its forced sale in 1938. (*Claim of Ulrich O. Strauss*, Claim No. W-22752, Dec. No. W-20485.)

In another instance the claimant, a United States corporation, was held to have been the owner of only an 83.962% interest in a German company which it had asserted to be a wholly-owned subsidiary. The remaining participation shares were held by three German nationals under agreements prohibiting the sale of shares to third persons by them or their heirs until they first offered to sell them to claimant corporation at book value. All of these shares were sold to claimant in December 1947; but until then they were owned by the three German nationals despite the restrictive provision on sale to others. The award to claimant was for the value of the 83.962% interest which it owned at the time of loss. (*Claim of IBM World Trade Corporation*, Claim Nos. W-7358-9, W-7361-4, and W-7366-7, Dec. No. W-17015.)

Silent partners.—Claims by persons asserting ownership interests as silent partners in partnerships organized under the laws of Germany or Austria were denied. Under Sections 335 through 342 of the German Commercial Code of 1897, a silent partner does not own property of the partnership. The silent partnership is a business relationship in which one of the parties appears as the sole owner of the business, while the other, the "silent partner," contributes property to the business in such manner that the property so contributed becomes the property of the owner of the business. The silent partner shares in the profits, and may or may not share in the losses. In case of bankruptcy, proceedings are instituted against the owner of the business, and the silent partner may claim as a creditor the amount of his contribution to the business to the extent that such amount exceeds his share of the loss. If the silent partner is in arrears in paying his contribution or any part thereof, the trustee in bankruptcy may demand from him payment in an amount sufficient to cover his share of the loss. Thus where a claimant's interest in an enterprise in Berlin, Germany, admittedly was that of a silent partner, she was held to have had no ownership interest in the partnership, but to have been a creditor only. (*Claim of Edith Tietz, et al.*, Claim Nos. W-16480 and W-11743, Dec. No. W-21536.) The same conclusion was reached in a claim based upon asserted silent partnership with respect to property in Senica, Czechoslovakia, which was governed by the Austrian Commercial Code until 1951. Article 252 of that Code provided that "The owner of the business becomes the owner of the silent partner's investment. . . ." Article 265 provided that "Upon dissolution of the silent partnership, the owner of the business has to settle the accounts with the silent partner and pay his claim in cash. . . ." The Commission held that claimant, as a silent partner, was a creditor with no ownership

interest in the property. (*Claim of Joseph Sarvady, et al.*, Claim No. W-6300, Dec. No. W-17493.)

Ownership by inheritance. In a claim based upon a loss of real and personal property in Poland which had been owned by claimant's father who died in 1960, claimant asserted that he had inherited the claim by intestate succession, despite a will which was duly probated in Poland leaving \$1,500.00 to claimant and stating that he was to receive no other portion of the estate. Claimant contended that the will was fraudulent, but submitted no evidence in support of his contention. In its Final Decision the Commission stated that according to the principles of international comity, a foreign judgment may be examined to determine if it was rendered by a court of competent jurisdiction; to see if the trial was conducted upon regular proceedings after due notice or appearance; and to ascertain whether the judgment was tainted with fraud. Since claimant had submitted no evidence which would tend to impeach in any way the Polish court decree, the Commission concluded that claimant had failed to establish an ownership interest and denied the claim. (*Claim of Grzegorz Mizia*, Claim No. W-5589, Dec. No. W-11171.)

Another claimant's father, who died in 1950, had been the owner of an elastic ribbon factory and an apartment building in Wuppertal-Barmen, Germany, which were destroyed in 1943. Allegedly, claimant came to the United States in 1928 relying upon his father's promise that if he did so, and acquired practical knowledge of the operation of a textile plant, upon his return to Germany he could take over the factory and would inherit it upon the father's death. It was further alleged that in 1935 or 1936 the father requested claimant to return and take over the enterprise, but that he was unable to do so because of political developments in Germany. Claimant urged that by virtue of an oral inheritance contract he had a beneficial or vested future interest in the property at the time of its destruction. The Commission denied the claim, holding that if political developments excused performance by the promisee, they also excused performance by the promisor, and the contract terminated because of frustration. The property was owned by claimant's father, a German national, at the time of its loss; and claimant had acquired no ownership interest therein. (*Claim of C. Julius Balckmann*, Claim No. W-4693, Dec. No. W-10542, 24 FCSC Semiann. Rep. 21 (Jan.-June 1966).)

An award of \$62,294.55 was made by Proposed Decision for a $\frac{1}{6}$ interest owned by claimant in a limited partnership in Germany which suffered losses during World War II. A portion of the claim based upon an additional $\frac{1}{24}$ interest allegedly inherited by claimant from her father in 1942 was denied for lack of proof. It was established subsequently that a $\frac{1}{6}$ interest in the firm had been owned by claimant's father, and disposed of by will in which his spouse was designated as "Vorerbin" and his four children, of which claimant was one, were designated as "Nacherbin." In its Final Decision the Commission quoted from a decision of the Tax Court of the United States in *Estate of Hedwig Zietz*, 34 T.C. 351 (1960) as follows:

. . . Under the then existing German law there was no

legal principle which corresponds to a testamentary trust, and there were no property interests which could be understood to be the same as those of a life tenant and a remainderman, respectively, under the general law of the United States. However, the property interest which is described in the German Civil Code as *Vorerbe* (or *Vorerbin*), first or provisional heir, resembles for all practical purposes the interest of a life tenant; and the interest of a *Nacherbe*, final heir, is substantially the same as that of a remainderman.

The Commission held that claimant inherited from her father an additional $\frac{1}{24}$ remainderman's interest in the partnership, and the award was increased by \$9,589.64, the difference between the value of a $\frac{1}{24}$ interest at the time of loss and the value of the mother's life tenancy therein, based upon her life expectancy. (*Claim of Katharina K. Mimno*, Claim No. W-18893, Dec. No. W-21297.)

Under Section 2136 of the German Civil Code, a testator may, by appropriate language in his will, free the *Vorerbe* from the normal limitations on his right to dispose of the property during his lifetime. Where this had occurred, the Commission held that the property was held by the designated *Vorerbe* not merely as a life tenant, but as a *befreite Vorerbe*, an unlimited prior heir, with power to alienate his interest in the property during his lifetime, and that the claimants, as *Nacherbin*, were not remaindermen, but had, at best, only an expectancy in the subject property. Their claim was denied. (*Claim of Irene Salinger, et al.*, Claim No. W-18380, Dec. No. W-19311.)

Ownership despite forced transfer.—The Commission's ruling in the *Claim of Herbert Brower* in the Polish claims program (appearing at page 483), to the effect that the transfer of property pursuant to discriminatory measures during World War II was invalid and ineffective to divest the owner of title, was followed by the Commission in claims under Title II of the War Claims Act of 1948. Accordingly, the Commission held that the Order B'nai B'rith, organized in the City of New York in 1843, to which property in Germany reverted upon the dissolution of the German lodges of the Order on April 10, 1937, retained ownership of such property despite its confiscation by the German Government on April 19, 1937, and was entitled to compensation for the damage sustained thereto during World War II. (*Claim of B'nai B'rith*, Claim No. W-4234, Dec. No. W-20304.)

In most cases of forced sales the element of duress was apparent from the circumstances of the sale, such as participation of internal revenue or police authorities in the transaction, or the inadequacy of the purchase price coupled with the additional fact that a portion of the purchase price was withheld to cover an "escape tax" on the seller. (*Claim of Lina Foerster*, Claim No. W-1463, Dec. No. W-20588.)

In some cases, however, the existence of other factors clouded the question of governmental duress. In one instance the Commission held in its Proposed Decision that a member of a partnership who had formally withdrawn therefrom on May 1, 1933 in return for certain consideration, had done so because his con-

tinuance in the firm became a heavy burden to the partnership; not, however, because of his race or religion, but because of his large private debts and public obligations. He was held not to have had an ownership interest in the firm after May 1, 1933, and the claim of his son and heir for wartime losses suffered by the partnership was denied. In its Final Decision issued after oral hearing, however, the Commission concluded that claimant's father had been a target of the Nazi Government since early 1933, that he had a substantial equity in the firm despite his indebtedness, that his withdrawal was not accompanied by payment of adequate compensation, and was accomplished under duress. He was held not to have been divested of his interest in the partnership, and an award was made to claimant. (*Claim of Ulrich O. Strauss*, Claim No. W-12067, Dec. No. W-20493.)

The reverse of this situation is illustrated by the claim of a United States corporation which owned 97% of a German enterprise selling toys, gift articles and novelties in 82 stores in Germany. During World War II 23 of the German firm's buildings were destroyed or damaged. In its Proposed Decision, the Commission made an award to claimant for its share of the loss with respect to thirteen of the buildings, but denied the portion of the claim based upon the other ten buildings because they had been acquired between 1937 and 1939 from persons who may have been subjected to persecution by the Nazi Government for religious, racial or political reasons, and claimant had not established that the German company acquired valid title to the buildings. After objection and oral hearing, the Commission found that the ten buildings had been purchased from Jewish owners who were under political compulsion and pressure to sell; that the purchase price was placed in blocked accounts and the sellers were unable to dispose of the proceeds which eventually were confiscated; that the sales were executed under duress and were invalid and ineffective to transfer title to the German firm; and that the sellers, and not the German firm, were the owners of the buildings during all of World War II and at the time of damage or destruction. Claimant established that after the war all of the sellers filed petitions with German authorities for restitution of their property, and that all cases were settled amicably between 1951 and 1953, the German firm paying additional sums to the sellers, and the sellers agreeing to withdraw their restitution petitions. Claimant argued that this amounted to a validation of the earlier sales. The Commission held that in finding the sales invalid and ineffective to transfer title, it had determined that the transactions were void, and not merely voidable. The German firm did not acquire title to the ten buildings until the settlements were concluded in 1951-53. In the Final Decision, compensation was denied to claimant for the ten buildings. (*Claim of F. W. Woolworth Co.*, Claim No. W-7115, Dec. No. W-18764.)

Award reduced by amounts received on account of same loss.—Section 206(a), Title II, of the 1948 Act provided that "In determining the amount of any award there shall be deducted all amounts the claimant has received on account of the same loss or losses with respect to which an award is made under this title." Thus it was necessary in claims based upon property which had been

the subject of forced sales to determine whether any consideration received by the seller, at the time of the sale or at the time of subsequent restitution proceedings, need be deducted from an award for losses suffered in the interim as a result of wartime damage or destruction. Frequently the purchase price, inadequate to begin with, was deposited in a blocked account where it was not available to the seller, and later was confiscated. In one case, however, where claimants had been forced to sell their real property in 1936, they received the equivalent of \$5,000.00 at that time. In 1949 they received an additional \$750.00 in settlement of restitution proceedings. The Commission determined that the value of the improvements was \$7,725.00 at the time of their destruction, and deducted the \$5,000.00 payment which was deemed attributable to the improvements, making awards to claimants totalling \$2,725.00. The postwar payment of \$750.00 was deemed applicable to the land, and was not deducted from the amount of the award for the loss of the improvements. (*Claim of Hugo Schlessinger, et al.*, Claim No. W-7837, Dec. No. W-16119, 25 FCSC Semiann. Rep. 34 (July-Dec. 1966).)

Occasionally a claimant or his predecessor in interest received full and adequate compensation for property subject to a forced sale. Where claimant's predecessor in interest sold real property in Nuremberg, Germany, for \$30,000.00 in 1937, and after World War II claimant and others received the equivalent of \$625.00 in settlement of restitution proceedings, the Commission held that since a total of \$30,625.00 was received as compensation for real property which had a total value of \$30,150.00, no loss had been suffered for which claimant could be compensated under the provisions of the Act, and denied the claim. (*Claim of Elsie Mayer, Executrix of the Estate of Bruno Mayer, Deceased*, Claim No. W-7107, Dec. No. W-19841.)

In some cases compensation was received as an indirect benefit. Where the evidence indicated that the equivalent of \$2,567.96 from the proceeds of a forced sale was used to pay off mortgages held on the subject property, the Commission held that claimant's predecessor-in-interest, who owned a one-half interest in the property should be considered to have received the benefit of half of that sum, or \$1,283.98. Claimant's award was reduced by that amount. (*Claim of Isabella Amalie Kaufman*, Claim No. W-11927, Dec. No. W-21328.)

Only amounts which came into the free and unrestricted use of the claimant or his predecessor-in-interest were deemed by the Commission as amounts received on account of the same loss and therefore deductible under Section 206(a). In one case the record indicated that in or about December 1938, when a firm in which claimant held a 10.187% interest was sold under duress, 41,560 reichsmarks were deposited in claimant's name in a blocked account with the bank of George Hauck & Son in Frankfurt a Main, Germany. The Commission held that this amount was not available to claimant at any time and therefore was not deductible from claimant's award. However, in March 1941 certain 3½% bonds of the German *Reichsbahn*, issue of 1941, in the face amount of 40,000 reichsmarks, were purchased on claimant's behalf from the deposited 41,560 reichsmarks; and eventu-

ally claimant received from the German Government the sum of 5,796.87 Deutschemarks for the bonds. The equivalent of the latter amount was deducted by the Commission from the award as an amount received on account of the same loss. (*Claim of Fritz Lebrecht*, Claim No. W-5477, Dec. No. W-21154.)

Deductions from awards were made by the Commission for amounts received from various other sources, as follows: from claimant's employer, the United Church Board for World Ministries (*Claim of Eunice Thomas*, Claim No. W-8507, Dec. No. W-3717); from the Government of the United States through Private Law 145 (Priv. L. No. 145, ch. 341, 57 Stat. 709 (1943)), (*Claim of Owen L. Dawson*, Claim No. W-13956, Dec. No. W-7918); from the Government of Malaya through its War Damage Commission (*Claim of W. P. Bradley*, Claim No. W-2943, Dec. No. W-214, 21 FCSC Semiann. Rep. 69 (July-Dec. 1964)); from the Government of the German Federal Republic (*Claim of Gertrude Schuelein*, Claim No. W-953, Dec. No. W-322); from the Government of the United States for vessels requisitioned and insured by the War Shipping Administration (*Claim of American-Hawaiian Steamship Company*, Claim No. W-20197, Dec. No. W-18802); from the Government of the Commonwealth of Australia (*Claim of The General Conference Corporation of Seventh-Day Adventists*, Claim No. W-9772, Dec. No. W-14764).

Assignment of claims.—In some cases, payment by the employer of war losses sustained by an employee resulted in the acquisition by the employer of the claim for compensation. In these circumstances awards were made on claims filed by the Government of the United States (*Claim of United States of America*, Claim No. W-20670, Dec. No. W-13041, 24 FCSC Semiann. Rep. 31 (Jan.-June 1966)); and by religious organizations which had reimbursed their missionaries for their war losses. (*Claim of The Commission on Ecumenical Mission and Relations of the United Presbyterian Church in the United States of America*, Claim No. W-13666, Dec. No. W-12643, 24 FCSC Semiann. Rep. 27 (Jan.-June 1966).) Similarly, where an insurance company paid a war loss under an insurance contract and thereby succeeded to the claim for compensation, the insurance company was deemed by the Commission to be the proper party claimant as an assignee. (*Claim of Insurance Company of North America*, Claim No. W-6561, Dec. No. W-14803.)

Not all such assigned claims came within the purview of the provisions of Title II of the 1948 Act. In the case of death of a person suffering a loss of property while a civilian passenger on a vessel, under Section 202(d)(3) of the Act, the statute permits payment only to a widow, husband, children, or parents, as specified in Section 202(d)(1). An insurance company is not included among the classes of persons eligible to receive such awards. Accordingly, a claim based originally upon loss of personal property of passengers aboard the SS *Athenia* and acquired by the claimant insurance company by assignment made by the insureds upon settlement of their claims under a personal property floater policy issued by the claimant, was denied. (*Claim of Fireman's Fund Insurance Company, formerly known as Home*

Fire and Marine Insurance Company of California, as Successor to Fireman's Fund Insurance Company, Claim No. W-8574, Dec. No. W-20958.)

Section 203 of the Act, which governs transfers and assignments, provided that the transfer or assignment for value of any property forming the subject matter of a claim under subsection (a) or (b) of Section 202 subsequent to its damage, loss, or destruction shall not operate to extinguish any claim of the transferor otherwise compensable under either of such subsections. This provision, however, did not prevent a transferor from assigning any possible claim for war damages in a compromise agreement in restitution proceedings concerning property in Germany. Consequently, the express assignment by a claimant alienating all interest in claims for war damages resulted in the denial of the claim for lack of ownership thereof. (*Claim of Erna Heims, et al.*, Claim No. W-6964, Dec. No. W-21232.)

In the Matter of the Claim of

Claim No. W-12968
Decision No. W-9672

JOHN GINTOFF

Under Title II of the War Claims Act
of 1948, as amended by Public Law
87-846

Intangible personalty does not constitute "property" within the meaning of Section 201(d) of the 1948 Act. Claim based upon debt denied.

PROPOSED DECISION

This claim, for \$1,000.00, under Section 202(a), Title II of the War Claims Act of 1948, as amended, is based upon the asserted uncollectibility of a debt. Claimant, JOHN GINTOFF, has been a national of the United States since his birth on June 30, 1900, in Somerville, Massachusetts.

Section 202 of the Act authorizes the Commission to determine the validity and amount of claims of nationals of the United States for—

(a) loss or destruction of, or physical damage to, property located in . . . Lithuania . . . which loss, destruction, or physical damage occurred during the period beginning September 1, 1939, and ending May 8, 1945 . . . *Provided further*, That such loss, destruction, or damage must have occurred, as a direct consequence of (1) military operations of war or (2) special measures . . . (76 Stat. 1107 (1962) ; 50 U.S.C. App. 2017a (1964).)

According to claimant's statements he loaned a sum of money to one Petras Sutas, who owned a business in Lithuania. Claimant states that he received an official bill of exchange issued through the Lithuanian National Bank and signed, "P. Sutas." Additionally claimant states that the business establishment was confiscated by Russian and German occupation forces in 1940/1941 and thus prevented the collection of the debt.

The asserted bill of exchange bears what purports to be the seal of the Lithuanian National Bank indicating that Petras Sutas paid a tax of 25 litu to the Lithuanian Government in 1938, for the privilege of executing either a bill of exchange or promissory note not to exceed 10,000 litu. No payee is named nor is the amount of the debt stated therein.

The question presented by this claim is whether the loss complained of constitutes a "loss or destruction of, or physical damage to, property" within the meaning of Section 202(a) of the Act.

Section 201(d) of the Act, which appears under the caption "Definitions," provides as follows:

As used in this title the term or terms—

* * *

(d) "Property" means real property and such items of tangible personalty as can be identified and evaluated. (76 Stat. 1107 (1962); 50 U.S.C. App. 2017 (1964).)

The Commission has studied the legislative history of the Act for the purpose of ascertaining the legislative intent. In 1961, H.R. 7283 was introduced and eventually became Public Law 87-846 (Title II of the War Claims Act of 1948). The term "property" was defined in Section 201(d) as quoted above.

Upon the commencement of committee hearings on this bill, the Chairman of the Subcommittee stated:

"It is the intention of the Chair that the hearings which we are beginning this morning be considered in the nature of supplementary hearings to the hearings which we held in 1959 on substantially identical bills.

* * *

"It is the intention of the Chair to consider the 1959 hearing record as a part of this year's hearings, with such additions and modifications as might be made in this year's hearing record." (Hearings on H.R. 7283 and H.R. 7479 Before a Subcommittee of the House of Representatives Committee On Interstate and Foreign Commerce, 87th Cong., 1st Sess. 1 (1961).)

A predecessor bill, H.R. 2485, proposed in 1959, contained the following detailed definition of the term "property":

Sec. 201. As used in this title the term or terms—

* * *

(d) "Property" means real property and such items of tangible personalty as can be identified, evaluated and, as determined by the Commission, are normally owned by any person or entity in like circumstances as that of the owner or claimant at the time of loss, and items of personalty or movables held or used in carrying on a trade, business, or profession at the time of such loss. It does not include intangible property.

During the hearings on H.R. 2485, 86th Cong. conducted by a Subcommittee of the House of Representatives Committee on Interstate and Foreign Commerce, it was urged that the definition of "property" be amended to include bank accounts, mortgages, leases, income from properties, accounts receivable and other commercial credits. (Hearings on H.R. 2485 Before a Subcommittee of the House of Representatives Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess. 484, 516, 636 (1959).)

The Subcommittee substituted the following language:

(d) "Property" means real property and such items of tangible personalty as can be identified and evaluated. (Staff of Subcomm. No. 3, House Comm. on Interstate and Foreign Commerce, 86th Cong., 1st Sess., H.R. 2485 (Comm. Print 1959).)

In reporting the bill to the House, the House Committee on Interstate and Foreign Commerce in a section-by-section analysis stated:

Paragraph (1) defines "property" to mean real property and tangible personal property. (H.R. Rep. No. 1279, 86th Cong., 2d Sess. 19 (1960).)

On March 1, 1960, the House passed H.R. 2485 with the above-quoted language substituted by the Subcommittee. (106 Cong. Rec. 4049, 4062, 4067 (1960).)

Thereafter, the Chairman of the Senate Committee on the Judiciary requested Commission comment on changes in H.R. 2485 made by the above-mentioned House Subcommittee on Commerce and Finance. The Commission in a letter dated April 20, 1960, made the following comment concerning the definition of "property":

2. The definition of property, Section 201(d), has been considerably shortened. The omission of the specific exclusion of intangible property, as in the administration proposal, does not seem serious since the limited definition of property appears to accomplish the same result. The other limitations, now eliminated, were never completely satisfactory and their omission should not

hamper the Commission in applying criteria of reasonableness and normalcy.

Congress eventually enacted Public Law 87-846 which sets forth the identical shortened definition of "property" in Section 201(d) of the Act.

Moreover, it is well settled that debts and evidences of indebtedness, such as rents, royalties, uncashed checks, bank accounts, promissory notes, bonds and other credits, are intangible personal property. (See *State of Texas v. State of New Jersey*, 379 U.S. 674 (1965); *Baldwin v. State of Missouri*, 281 U.S. 586 (1930).)

Upon careful consideration of this entire matter, including the legislative history of the Act, the Commission holds that intangible personalty does not constitute "property" within the meaning of Section 201(d) of the Act, and that claims based upon debts and evidences of indebtedness are not compensable under Section 202(a) of the Act. Accordingly, this claim is denied.

The Commission deems it unnecessary to consider other elements of this claim.

Dated at Washington, D.C.

November 24, 1965.

Nature of property.—A significant number of claims filed under Title II of the War Claims Act of 1948, as amended, were determined by the Commission to be not compensable under Section 202(a), as they failed to meet substantive requirements for loss of "property" as defined in the Act. Section 201(d) of such Act defines the term "property" to mean "real property and such items of tangible personalty as can be identified and evaluated." Pursuant to the legislative history noted in the *Gintoff* decision, the Commission construed this definition to limit compensability to losses of real property and tangible personal property, excluding all items determined to be intangible personalty. The denial of claims based on the loss of intangible personal property extended over a broad and varied range of claimed losses, and included claims based upon debts and evidences of indebtedness, as in *Gintoff*, and losses based on accounts receivable and other commercial credits (*Claim of Harry N. Nelson Co., Inc.*, Claim No. W-7795, Dec. No. W-3389). In another claim, where a portion thereof purportedly was based upon a loss of merchandise, the Commission determined that it was based in fact on the loss of payment for such merchandise, representing a debt to claimant; and this portion of the claim plus certain administrative costs and expenses incurred by claim-

ant were held to be not compensable under the Act. (*Claim of General Motors Corporation and General Motors Overseas Corporation*, Claim No. W-10619, Dec. No. W-21487.)

In claims based on the loss of rents, the Commission noted that rents which have become due constitute mere choses in action, and while a chose in action is one form of personal property, its inherent nature places it squarely within the category of intangible personal property. Accordingly, the Commission concluded that accrued rent does not constitute "property" within the purview of Section 201(d) of the Act, and denied the claim based thereon. (*Claim of Eustratios G. Spyropoulos*, Claim No. W-10696, Dec. No. W-3723, 22 FCSC Semiann. Rep. 63 (Jan.-June 1965); *Claim of Aron Perlman*, Claim No. W-14268, Dec. No. W-21329.)

A major portion of claims denied as intangible personalty were based on the loss of choses in action, including bank accounts. When a general deposit of money is made in a bank, title to the money vests in the bank and the relationship of debtor and creditor is created between the bank and the depositor, who acquires a chose in action. (*Claim of Herman H. Peters*, Claim No. W-1335, Dec. No. W-296; *Claim of Michael Wolynski*, Claim No. W-3041, Dec. No. W-3358; *Claim of Reinhold Wietzke*, Claim No. W-11963, Dec. No. W-3390.)

In denying claims based on mortgages, the Commission noted that a mortgage is merely a lien or security for a debt, and passes no title or estate in the mortgaged premises to the mortgagee. Upon execution of a mortgage, considered to be personal property, the mortgagee acquires a chose in action, which is intangible personal property. (*Claim of Louise H. Racker*, Claim No. W-721, Dec. No. W-408; *Claim of Paula Perlman*, Claim No. W-504, Dec. No. W-682.)

The Commission likewise determined claims based on the loss of bonds to fall within the class of claims which are not compensable because they are not based upon "property" as defined in the Act. A bond is an obligation to pay a specified sum of money at a definite time, usually running through a series of years. The Commission found that inasmuch as the purchaser of a bond acquires a right to money which is not in hand and can be reached and enjoyed only by an action, his right constitutes a chose in action. (*Claim of J. E. Baker, Jr., Co-Executor of the Estate of John Earl Baker, Deceased*, Claim No. W-1755, Dec. No. W-407.)

Claims based on the loss of life insurance policies were also denied. The Commission found it well settled that life insurance is a contract whereby the insured agrees to pay certain sums, called premiums, at specified times, and in consideration thereof the insurer agrees to pay certain sums of money on certain conditions and in specified ways. Thus, a policy of insurance is a chose in action, and intangible personal property, and does not constitute "property" within the meaning of Section 201(d) of the Act. (*Claim of Hughes Alfred Evans, et al.*, Claim No. W-097, Dec. No. W-468; *Claim of Anna von Tongeln*, Claim No. W-8292, Dec. No. W-9104.)

In one claim, claimant asserted the loss of monthly income

received from her brother-in-law, who had obligated himself to support claimant after the death of claimant's husband. The brother-in-law died subsequent to his deportation by German authorities during the war. Claim was made for the value of certain shares of stock from the earnings of which claimant's brother-in-law had supported her. The Commission found that claimant was not the owner of the stock, but was, at best, the owner of a contractual right to support. Such a right is intangible personal property and does not form the basis for a valid claim under Title II of the Act. (*Claim of Leopoldine Lehrer*, Claim No. W-2932, Dec. No. W-562.) Another claim was based upon the loss of income and royalties resulting from the inability of claimant's predecessor-in-interest to exploit certain of his musical works. The claim was denied on the ground that the predecessor's loss amounted to a loss of income and royalties which are intangible personalty. Claimants objected to the Proposed Decision, contending that a musical manuscript constitutes tangible personal property which can be identified and evaluated within the purview of Section 201(d) of the Act, the measure of compensation being the cost of reproducing the manuscript. However, the denial was affirmed by Final Decision on the ground that although the manuscript itself was "property," the record evidence failed to establish any loss thereof during the statutory period from September 1, 1939 to May 8, 1945. (*Claim of Isadore L. Buchhalter, et al.*, Claim No. W-2836, Dec. No. W-16750.)

In a claim based upon a participation to the extent of 2% of the gross income from the extraction of mineral oil from certain wells in Poland, claimant alleged a loss by reason of German operation of the wells during their occupation of the area. The claim was denied by Proposed Decision on the ground that a claim based upon loss of income is not one based upon tangible property, and is not compensable under the Act. After oral hearing, the Commission found that the nature of claimant's agreement with the exploiting company gave him an election to take 2% of the oil extracted or 2% of the gross income from the sale thereof, and held that claimant thus acquired a 2% proprietary interest in all oil extracted from the wells. This constituted "property" as defined in the Act. In its Final Decision, the Commission granted an award for 2% of the value of the oil extracted by German authorities between April 11, 1944, when claimant became a national of the United States, and July 27, 1944, when the Germans were expelled from that part of Poland and operation of the wells was suspended. (*Claim of Walter Butler*, Claim No. W-1026, Dec. No. W-10716.) A portion of another claim was based on the loss of money assertedly withdrawn from a business firm, in which claimant owned an interest, by its German operators during World War II. This portion of the claim was denied by Proposed Decision as being based on intangible personalty. Claimant's assertions, in support of objections to the foregoing findings, that the monies withdrawn by the occupation forces are compensable as a conversion of inventory into money, were found to be not tenable. The Commission found that in the normal course of business the

firm's income was derived from the sale of its products; and that money withdrawn from the firm, albeit derived from the sale of inventory, amounted to a loss of income from the firm, and not a loss of tangible property as defined in the Act. The denial of this portion of the claim was affirmed by Final Decision. (*Claim of Frank A. Eisenstein*, Claim No. W-7935, Dec. No. W-18996.)

In another claim, where an award was made in the amount of \$1,923,842.69 for the loss of real and personal property in Germany, a portion of the claim for \$1,152,155.92 asserted for "loss on war goods in progress" or "losses from unfinished war production" at plants in Stuttgart, Germany, was denied. The Commission found that this amount represented loss of anticipated income or profits from unfinished war material rendered useless or unmarketable by reason of the suspension of war production incident to the cessation of hostilities. The Commission concluded that the expectation of future income or profits dependent upon estimated future demand and other fluctuating market and economic conditions does not constitute tangible personalty within the statutory definition of "property" found in Section 201(d) of the Act. (*Claim of Eastman Kodak Company*, Claim No. W-9604, Dec. No. W-21458.)

A portion of a claim for "key money" allegedly paid in order to obtain a lease on certain store space and an apartment was considered to be based upon debt or upon loss of enjoyment of the leaseholds during the war years, and was denied as based upon an intangible personal right. (*Claim of Estate of Tin Chong Wong, Deceased*, Claim No. W-1787, Dec. No. W-6665.) The exclusive distribution rights in the United States to Polish motion picture films, the negatives of which were destroyed in Warsaw before delivery, were held not to be tangible personal property within the meaning of "property" as defined under the statute and therefore not the basis of a compensable claim. (*Claim of J. H. Hoffberg*, Claim No. W-21352, Dec. No. W-15523, 25 FCSC Semiann. Rep. 39 (July-Dec. 1966).) A claim based upon losses sustained by claimant while a passenger aboard the SS *Athenia* included a claim for the loss of claimant's education because of the necessity of his leaving school and going to work when his ailing father suffered from shock upon learning of the *Athenia* disaster and died two years later. The Commission concluded that, while such loss may have been sustained, it is clear that it cannot be deemed to constitute the loss or destruction of "property on such vessel" within the meaning of Section 202(d)(3) of the Act; nor does the loss of education resulting from the sinking of the SS *Athenia* constitute a loss of "property" as defined in Section 201(d) of the Act. (*Claim of Charles B. Grant*, Claim No. W-3549, Dec. No. W-850.) Moreover, the Commission noted that pursuant to Section 202(a) of the Act, the claimed loss "must have occurred as a direct consequence of . . . military operations of war," and stated that claimant's loss of education, caused in part by his ailing father's death two years after the sinking of the SS *Athenia*, was, at most, an indirect and not a direct consequence of military operations of war.

A similar holding was made in a claim in which an award was granted for the destruction of a farmhouse, but a further claim

to recover the expense of renting an apartment because of the destruction of the farmhouse was denied. Not only were the expenses incurred in renting the apartment held not to constitute "property" within the meaning of the Act, but they were deemed an indirect, and not a direct consequence of military operations of war. (*Claim of Joseph Weklar*, Claim No. W-2130, Dec. No. W-6883.)

The Commission denied a claim based upon the loss of commission paid to the Hamburg-American Line as agent for the American Export Lines on the purchase of two steamship tickets for passage from Germany to the United States, unused because of the outbreak of war. It was held that, according to the prevailing view, the sale and purchase of a "passage ticket for ocean voyage" is vested with the elements of, and therefore becomes a contract. Since property in an action which depends entirely upon a contract is a chose in action, the Commission found this claim to be based on intangible personalty, and not compensable under the Act. (*Claim of Sol Donn*, Claim No. W-14056, Dec. No. W-3551.) Similarly, a claim based on the loss of two clipper reservations during World War II was held to be based on the loss of intangible personalty. (*Claim of Helen Erdos, et al.*, Claim No. W-8500, Dec. No. W-14539.) In another instance, the Commission found that a claim based upon a special assessment paid to secure an exit permit from German authorities was a claim for the loss of intangible personal property. (*Claim of Herbert H. Elliott*, Claim No. W-1835, Dec. No. W-2862.)

A portion of another claim was based upon the asserted loss of salary and expense account sustained by claimant during his internment by the Japanese during World War II. The Commission held the loss of salary and expense account to constitute a loss of intangible personal rights, not compensable under Section 202(a) of the Act. (*Claim of Alvin Hans Roche*, Claim No. W-1824, Dec. No. W-7941.) A portion of a claim based upon losses assertedly caused by and resulting from hard labor, injuries, and atrocities sustained as an internee was denied as having no relation to real and personal property as defined in Section 201(d) of the Act. (*Claim of Claude B. Cooper*, Claim No. W-21573, Dec. No. W-13474.)

In contrast, where claimant, a member of the Armed Forces of the United States serving in Europe, established a loss of certain personal property upon his capture by German authorities, the Commission found such loss to have resulted from military action in Germany, and concluded that claimant was entitled to an award under Section 202(a) of the Act. (*Claim of Forest Theodore Romack*, Claim No. W-4073, Dec. No. W-9304; *Claim of George E. Agnew*, Claim No. W-2161, Dec. No. W-4239.)

Location of property on date of loss.—Pursuant to Section 202 of the War Claims Act of 1948, the Commission was authorized to adjudicate claims for—

- (a) loss or destruction of, or physical damage to, property located in Albania, Austria, Czechoslovakia, the

Free Territory of Danzig, Estonia, Germany, Greece, Latvia, Lithuania, Poland, or Yugoslavia, or in territory which was part of Hungary or Rumania on December 1, 1937, but which was not included in such countries on September 15, 1947, which loss, destruction, or physical damage occurred during the period beginning September 1, 1939, and ending May 8, 1945. . . .

Under Section 201(a) of the Act, further clarifications were made with respect to the areas included in the Act:

(a) "Albania," "Austria," "Czechoslovakia," "the Free Territory of Danzig," "Estonia," "Germany," "Greece," "Latvia," "Lithuania," "Poland," and "Yugoslavia," when used in their respective geographical senses, mean the territorial limits of each such country or free territory, as the case may be, in continental Europe as such limits existed on December 1, 1937.

In a claim based upon the asserted loss of proceeds from the sale of real property situated in Iowa, which proceeds were distributed in accordance with the Vermont laws of intestate succession, the Commission found that the asserted losses occurred in the United States of America, which is not one of the countries or areas specified in Section 202(a) of the Act, and concluded that the claim was not compensable under Title II of the Act. (*Claim of Laura Kruse*, Claim No. W-3772, Dec. No. W-572.)

In this and other claims based on losses occurring in countries or areas not specified in the statute, the Commission noted that the intention of the Congress to provide only for compensation of certain losses which occurred in specified countries or areas and to exclude those arising elsewhere is expressed in the legislative history of H.R. 7283, which upon enactment became Title II of the 1948 Act. In this connection, the Commission quoted from the House Committee on Interstate and Foreign Commerce at page 8 of its favorable report on H.R. 7283:

Since the end of World War II, American property owners who suffered war damages have been looking for some way of recouping their losses. Some of the owners have been compensated in whole or in part under the domestic laws of other countries. Some have been compensated pursuant to peace treaties, and others, by laws enacted by the Congress of the United States.

H.R. 7283, as amended, would provide a measure of relief to American war damage claimants in areas in Europe and Asia not heretofore covered. (H.R. Rep. No. 2035, 87th Cong., 2d Sess. (1962).)

A claim based on the loss of personal property situated in a factory located in Antwerp, Belgium, which was destroyed by bombing, was denied since Belgium was not one of the countries or areas specified in Section 202(a) of the Act. (*Claim of Norman Fischer Stuart*, Claim No. W-259, Dec. No. W-005, 20 FCSC Semiann. Rep. 39 (Jan.-June 1961).) On the same grounds, a claim based upon the loss of personal property confiscated by

German troops in February 1943 from claimant's home in Amsterdam, Netherlands, was denied. (*Claim of Friedrich Walter Lewinsohn*, Claim No. W-8665, Dec. No. W-419.) In that instance, it was noted specifically that under a reciprocal agreement between the United States and the Netherlands in 1947, the Government of the Netherlands assumed responsibility for property losses sustained during the war by nationals of the United States.

In another claim, the record established that the losses upon which the claim was based occurred in the city of Fiume. This city is situated in an area which Italy ceded to Yugoslavia in full sovereignty pursuant to Article II of the treaty of peace with Italy, signed at Paris, France, February 10, 1947, effective September 15, 1947. (T.I.A.S. No. 1648 (1947); 61 Stat. 1576 (1947).) It is now known as Rijeka, Yugoslavia. However, on December 1, 1937 the relevant date under the Act, the city of Fiume was within the territorial limits of Italy. Italy is not one of those areas or countries enumerated in the Act. The Commission found that the property was not located in Yugoslavia within the meaning of Section 201(a) of the Act, nor in any other country or area specified in Section 202(a) of the Act, and concluded that the claim was not compensable. (*Claim of Carlo Lenaz*, Claim No. W-1129, Dec. No. W-006, 20 FCSC Semiann. Rep. 38 (Jan.-June 1964).) Claims based upon losses occurring in Italy proper were denied for the same reason. (*Claim of Henry Ludmer*, Claim No. W-3071, Dec. No. W-21109.)

A number of claims were based on losses of property located in the Dodecanese Islands, which were ceded to Greece by Italy in full sovereignty pursuant to Article 14 of the treaty of peace with Italy. Article 78 of the treaty provided, among other things, that the Government of Italy shall be responsible "for loss or damage sustained during the war by property," both movable and immovable, as well as rights or interests therein of United States nationals in territories ceded by Italy under Article 14. On December 1, 1937, the relevant date under the Act, the Dodecanese Islands were within the territorial limits of Italy. As Italy was not one of the specified areas, claims based on losses which occurred in the Dodecanese Islands were found to be not compensable within the provisions of Sections 201 and 202(a) of the Act. (*Claim of George M. Sevdalis*, Claim No. W-5408, Dec. No. W-225; *Claim of Constantinos Sevdalis*, Claim No. W-1523, Dec. No. W-129.)

With respect to Hungary, provision is made in Section 202(a) only for those claims filed under Title II of the Act, otherwise compensable, that arose "in territory which was part of Hungary . . . on December 1, 1937, but which was not included in such [country] on September 15, 1947." September 15, 1947 marks the effective date of the treaty of peace with the Government of Hungary. Pursuant to Article I of that treaty, the frontiers of Hungary were established. (T.I.A.S. No. 1651 (1947); 61 Stat. 2065 (1947).) Thus, a claim based on the loss of real and personal property located in Bodroghalom, situated in an area that was part of Hungary on December 1, 1937, but was also included in that country on September 15, 1947, was denied by the Com-

mission. (*Claim of Rose Greenstein*, Claim No. W-2854, Dec. No. W-228, 21 FCSC Semiann. Rep. 70 (July-Dec. 1964).) The Commission found that the property upon which this claim was based was not located in that part of Hungary which is described in Section 202(a) of the Act, nor in any other area therein specified. Similar conclusions were reached by the Commission with respect to claimed losses occurring in Tasto and Satoraljaújhely, Hungary. (*Claim of Agnes Hersh*, Claim No. W-12447, Dec. No. W-718; *Claim of Imre Keller, et al.*, Claim No. W-15388, Dec. No. W-9227.)

Under Section 202(a) of the Act, further provision was made for losses of "property in territory occupied or attacked by the Imperial Japanese military forces (including territory to which Japan has renounced all right, title, and claim under article 2 of the Treaty of Peace Between the Allied Powers and Japan) except the island of Guam." In one claim, certain items of furniture and household goods were crated for shipment to the United States when the Japanese froze all American assets in Japan. It appeared that the property was seized at Kobe, Japan, and subsequently lost or destroyed at Yokohama, during World War II. The Commission held that the claim was not covered by Section 202(a) of the Act since the loss occurred in Japan itself, and not in a territory occupied or attacked by Japanese forces, nor in a territory to which Japan had renounced all right, title and claim under the Treaty of Peace. (*Claim of Selden F. McCuskey*, Claim No. W-3250, Dec. No. W-150.) One claimant objected to a Proposed Decision denying his claim based upon property lost in Japan, urging that Japan itself was occupied by Imperial Japanese military forces between July 1, 1937 and September 2, 1945, and therefore is among the countries included in Section 202(a) of the Act. The Commission held, however, that "territory occupied or attacked by the Imperial Japanese military forces" means territory which underwent hostile occupation or attack by Japan during the specified period, and that the Japanese homeland was not occupied in this sense. Provision for compensation for war losses suffered in Japan by United States nationals was made in Article 15 of the treaty of peace with Japan, and not in Title II of the War Claims Act of 1948, as amended. The denial of the claim was affirmed by Final Decision. (*Claim of Robert Faulkner Moss*, Claim No. W-2730, Dec. No. W-164, 21 FCSC Semiann. Rep. 67 (July-Dec. 1964).)

Time of loss.—Section 202(a) of the War Claims Act specifically sets forth the period "beginning September 1, 1939 and ending May 8, 1945" during which the military action or special measures must have occurred for claims based on losses arising in areas of Europe to be compensable, and the period "beginning July 1, 1937 and ending September 2, 1945," for territory occupied or attacked by the Imperial Japanese forces. In one case, the Commission had determined previously in a claim filed by the same claimant under the Polish Claims Agreement of 1960, that his unimproved real property in Grochaw, Warsaw, was taken by the Government of Poland on November 21, 1945. As there was neither an allegation nor any indication in the record that the property had been lost, damaged or destroyed as a result of any

action during the statutory period of time, the Commission found the claim not compensable under Title II of the 1948 Act, and the claim was denied. (*Claim of Estate of Mitchell Czechowicz, Deceased*, Claim No. W-3690, Dec. No. W-537.) Again, where the loss resulted from the nationalization of a Polish corporation in which claimant held a stock interest, the Commission denied the claim as not compensable, since the corporation had been nationalized on September 5, 1947, and there was no indication of loss, damage or destruction during the statutory period. (*Claim of Stanislaw Zarebski*, Claim No. W-7497, Dec. No. W-7129.)

Where a claimant's property in Chemnitz, Germany, was the subject of a forced sale in 1937, and the improvements were destroyed on March 5, 1945, the Commission granted an award for the value of the improvements, finding that the forced transfer did not divest claimant of her title to the property. Claimant also sought compensation for the value of the land as having been lost as a result of "special measures" since it was located in East Germany, under Communist control at the end of hostilities, and could not be restored to her. (See *Claim of Aris Gloves, Inc.*, appearing at page 624, and annotations thereto, on the subject of "special measures.") The Commission held that under Section 202(a) the loss, whether a direct consequence of military operations of war or special measures, must have occurred between September 1, 1939 and May 8, 1945 as to property in Germany, and therefore the loss of land, occurring originally in 1937, was not compensable. (*Claim of Elizabeth Beck*, Claim No. W-7328, Dec. No. W-8988.)

For discussion of requirements as to time of loss with respect to claims under subsections 202(b), (c), and (d) of Title II, see annotations to *Claim of American-Hawaiian Steamship Company*, appearing at pages 635 and 641.

Nature of loss.—In addition to defining "property" and specifying the places where and the periods of time within which the property must have been lost, damaged or destroyed in order to give rise to a valid claim, Title II of the 1948 Act described the nature of the losses which might be found compensable in the following language from Section 202(a) :

such loss, destruction, or damage must have occurred, as a direct consequence of (1) military operations of war or (2) special measures directed against property in such countries or territories during the respective periods specified, because of the enemy or alleged enemy character of the owner, which property was owned, directly or indirectly, by a national of the United States at the time of such loss, damage or destruction. . . .

Where a claim was based upon the asserted destruction of improvements in Wisnicz, Poland, but where a physical inspection and investigation by a member of the Commission's staff disclosed that the property did not sustain any damage or destruction during World War II, the Commission found that the claim was not compensable under Title II of the Act. (*Claim of Hirsch Zehnwirth*, Claim No. W-3793, Dec. No. W-11105.) In another

claim, a portion thereof was based upon the asserted loss or destruction of personal property, and damage to an automobile, resulting from a fire at the Hotel Hirschen, St. Blasien, Germany, on March 23, 1945. The record included a statement by the mayor of St. Blasien that the hotel fire was in no way caused by a bombing attack; and that during the war from 1939 to 1945, there were no attacks of any kind carried out against St. Blasien. It further appeared from the record that claimant participated, through counsel, in a German criminal proceeding in 1946 against the owner of the Hotel Hirschen for negligent arson in connection with the fire of March 23, 1945. The Commission concluded that the subject fire was not a direct consequence of military operations of war or special measures as required by Section 202(a) of the Act, and denied this portion of the claim. (*Claim of Jeanne E. Toscano*, Claim No. W-048, Dec. No. W-657.) Claimant therein also based a portion of the claim on personal injuries. The question presented was whether such a claim is within the purview of Section 202(d) (2) of the Act, the only section of Title II which covers claims for personal injuries. According to claimant's statements, she was disabled because of injuries sustained in the fire at the Hotel Hirschen. The Commission found that claimant was not at the time her claim arose a "passenger" on a vessel as that term is used in Section 202(d) (2) of the Act, and concluded that her claim for personal injuries should also be denied (a matter discussed at page 640).

The question was raised in one claim whether damage to real or personal property caused by lack of proper maintenance, normal repairs and upkeep constitutes loss, damage or destruction under Section 202(a) of the Act. After careful consideration of all facts, the Commission held that damage resulting from lack of maintenance, improper maintenance, lack of normal repairs, upkeep, and refurbishing does not constitute loss, damage or destruction as a direct result of military operations of war or special measures within the meaning of Section 202(a) of the Act. (*Claim of I. Koulaieff's Sons, Inc.*, Claim No. W-9076, Dec. No. W-19685.) Other consequential losses determined by the Commission not to be compensable under the provisions of Title II of the Act, included asserted damage to a grain mill located on the River Crnojevich in Montenegro, Yugoslavia, resulting from the erection of a dam upstream and diversion of the river, preliminary to the building of a hydroelectric plant. Claimant contended that, although the hydroelectric plant was not completed until the late 1940's or early 1950's, the diversion of the river commenced during World War II and that the practical functioning of claimant's mill was destroyed in 1943-44. Further, it was claimant's contention that electric power is a necessity for the conduct of war and, therefore, the loss of the mill's operational utility occurred as a consequence of military operations of war. The Commission held that, although claimant's riparian rights may have been encroached upon by the alleged damming of the river upstream from claimant's mill, such encroachment was not a direct consequence of military operations of war or of special measures within the meaning and contemplation of the Act. If, as contended, the loss of utility of the mill was a consequence of

military operations of war, then at best, it was only an indirect consequence. Accordingly, the claim was denied. (*Claim of Philip Marco Strugar*, Claim No. W-17347, Dec. No. W-9005.)

Consequential losses such as transportation costs of employees and other hiring costs arising out of the loss of a carnival show were found not compensable. Although an award was made for the loss of equipment of a carnival show in Hong Kong, the portion of the claim based upon transportation and hiring costs was denied, the Commission holding that claims based upon the loss of general expenses and costs of doing business were not intended by Congress to be compensable under Section 202(a) of the Act. (*Claim of Evone Montague Taft, et al.*, Claim No. W-13384, Dec. No. W-16539.)

In one claim, claimant stated that due to his internment by the Japanese military authorities from December 1941 to August 1945, the inventory of clothing owned by him was "prematurely" worn out as a result of the conditions of his internment, so that he sustained a loss in the amount of \$945.00. This portion of the claim was denied since the evidence of record did not establish that such loss, damage or destruction occurred as a direct consequence of military operations of war as set forth in Section 202(a) of the Act. Claimant objected to the Proposed Decision contending that his arrest and civilian internment by Japanese military authorities was a military operation of war and was a direct cause of the damage he sustained. The Commission rejected claimant's contentions and affirmed the findings contained in the Proposed Decision. The Commission recognized that civilian arrests are considered reasonable measures of self-protection which any sovereign power may employ, and an extension of military operations of war. Claimant, nevertheless, failed to show clearly that the "premature wearing out of his clothing during five years internment constitutes a loss" within the purview of Section 202(a) of the Act. (*Claim of E. A. Allen*, Claim No. W-14277, Dec. No. W-9078.)

In a claim in which awards totalling \$710.00 were made for the loss of personal property in China, an additional sum of \$570.00 was claimed as a loss resulting from the sudden sale of certain items of personal property on an unspecified date prior to claimants' internment in 1943. As there was no evidence in the record to indicate that any such losses occurred as a direct consequence of military operations of war or special measures, the Commission found this portion of the claim not compensable under Title II of the Act. In its Final Decision rejecting claimants' objections to this denial, the Commission recognized that claimants may have demonstrated a certain degree of prudence in disposing of their property prior to an outright military confiscation or destruction thereof, but held that they had failed to establish any loss occurring as a direct consequence of military operations of war. (*Claim of Louis E. Wolferz, et al.*, Claim No. W-18651, Dec. No. W-10896.)

One claim was based upon two 2,000,000 mark bank notes payable to bearer, issued by The Federal Bank of Germany, on August 9, 1923. The claim was for the redemption value of the bank notes. From the record, it appeared that the paper mark

notes were legal tender in Germany and were subject to recall, redemption or exchange by The Federal Bank Treasury, Berlin, Germany, beginning September 1, 1923; that after World War I, the German mark became worthless; and that after July 15, 1925, paper mark notes became invalid and the bank's liability for redemption ceased. It further appeared that claimant's loss occurred in 1938, as a result of the purchase of worthless bank notes. Section 202(a) of the Act provides only for losses which occurred as a direct consequence of (1) military operations of war or (2) special measures occurring in specified areas of Europe "during the period beginning September 1, 1939. . . ." The Commission, therefore, found that claimant suffered no war losses within the meaning of Section 202(a) of the Act, and that the claim was not compensable under Title II of the Act. (*Claim of Charles McDermott*, Claim No. W-2153, Dec. No. W-3045.)

Personal injuries, the subject of a number of claims, sustained during World War II by persons other than American passengers aboard vessels engaged in commerce on the high seas during the period beginning September 1, 1939, and ending December 11, 1941, as specified in Section 202(d) of the Act, could not be the basis of compensable claims under Title II of the War Claims Act of 1948, as amended. A claim for compensation for injuries sustained by claimant in Poland on November 11, 1942, when he was struck on the head by a German police officer, was denied because claimant was not a civilian American passenger on a vessel engaged in commerce on the high seas at the time of the injury, and also because the injury did not occur during the period specified in the statute. (*Claim of Joseph Jarosz*, Claim No. W-912, Dec. No. W-079, 20 FCSC Semiann. Rep. 43 (Jan.-June 1964).) In the same manner, a portion of a claim based upon personal injuries, forced labor, and inhumane treatment while interned by the Japanese during World War II was denied. (*Claim of Robert W. Foster*, Claim No. W-452, Dec. No. W-5714.)

Claims otherwise provided for.—Section 208 of the 1948 Act provided that "No award shall be made under this title to or for the benefit of . . . any claimant whose claim under this title is within the scope of title III of the International Claims Settlement Act of 1949, as amended (69 Stat. 570), except any claimant whose award under section 303(1) of title III of the International Claims Settlement Act of 1949, as amended, is recertified pursuant to subsection (b) of section 209 of this title." (For a discussion of the recertification of such awards see the annotations to *Claim of Bruno Adamski*, appearing at page 664.)

A claim based upon the destruction by Italian armed forces on July 19, 1941 of a house and personal property in Kuljace, Yugoslavia, was denied. During the administration of the Italian claims program under Title III of the International Claims Settlement Act of 1949, as amended, the Commission held that claims for property losses in Yugoslavia attributable to Italian action during World War II were within the purview of Section 304 of that Act. (*Claim of Marie Verderber*, Claim No. IT-10488, Dec. No. IT-92, 10 FCSC Semiann. Rep. 136 (Jan.-June 1959).) Accordingly, the claim under Title II of the 1948 Act was held to have been within the scope of Title III of the 1949 Act and there-

fore not compensable pursuant to the express provisions of Section 208. (*Claim of Marko Kuliacha*, Claim No. W-3605, Dec. No. W-1122, 22 FCSC Semiann. Rep. 43 (Jan.-June 1965).) For the same reason the Commission denied a claim based upon the loss of various items of personal property in Stara-Cerkov, Yugoslavia, all of which was destroyed or taken by Italian armed forces during World War II. (*Claim of Maria Pousche*, Claim No. W-9737, Dec. No. W-3732.)

An interesting factual situation was presented in one claim based upon the loss, damage or destruction of property located in Greece, which was denied for the reason that it was properly within the scope of Title III of the 1949 Act. Claimant had filed a claim for \$14,000.00 pursuant to Section 304, Title III of the 1949 Act, and had been awarded \$5,312.00, plus interest, as compensation in full for losses sustained. The claim filed under Section 202(a) of the War Claims Act was based upon property losses identical to those previously asserted, and was for the difference between the amount claimed under Section 304 of the 1949 Act and the amount of the award, excluding interest granted in the Title III claim. The Commission rejected claimant's contentions that the losses were caused in part by German military action, and found the record to be undisputed that the claim was based upon the same losses asserted in the claim against Italy under Title III of the 1949 Act. Since claimant had received an award under Title III, his claim was within the purview of the 1949 Act, and barred under Title II of the 1948 Act by the provisions of Section 208. (*Claim of Theodore Koutras*, Claim No. W-7390, Dec. No. W-2074, Final Decision.) In contrast, where it was established that losses occurred both as a result of Italian and German military operations in Greece, an award was granted for that portion attributable to German military action under Section 202(a) of Title II of the War Claims Act, and a denial issued for that portion of the claim based upon damage caused by Italy which was not compensable as such portion was within the scope of Title III of the 1949 Act. (*Claim of Estate of Constantinos A. Soffos, Deceased*, Claim No. W-289, Dec. No. W-2909.)

Another example of claims found not compensable pursuant to the statutory provisions of Title II of the Act, included one claim for the loss of two cargo vessels located in Italy, denied by Proposed Decision on the ground that full compensation previously had been received by claimant under the treaty of peace with Italy, pursuant to two decisions of the Italian-United States Conciliation Commission. Claimant appealed, urging that the ships had a higher value than the amount received from Italy. In its Final Decision, the Commission concluded that irrespective of the value of the ships, the claim was not compensable under Title II of the 1948 Act. As noted above, Section 208 of Title II of the 1948 Act excluded claims within the scope of Title III of the 1949 Act. This claim could not be considered as within the scope of Title III of the 1949 Act, since that Act, with respect to Italy, covered only claims for which provision had *not* been made in the treaty of peace with Italy (see annotations to *Claim of Albert Flegenheimer* appearing at page 291), and provision obviously had been made for this claim in the treaty, since awards had been

paid thereunder. The Commission had recourse to legislative history, particularly to a favorable report of the House of Representatives Committee on Interstate and Foreign Commerce on H.R. 7283 which, upon enactment, created Title II of the 1948 Act, in which the following appears:

Since the end of World War II, American property owners who suffered war damages have been looking for some way of recouping their losses. Some of the owners have been compensated in whole or in part under the domestic laws of other countries. Some have been compensated pursuant to peace treaties, and others, by laws enacted by the Congress of the United States. H.R. 7283, as amended, would provide a measure of relief to American war damage claimants in areas in Europe and Asia not heretofore covered. Categories of war claims authorized by this legislation would be paid out of proceeds resulting from the sale of German and Japanese assets located in the United States which were taken over (vested) by the Alien Property Custodian. (H.R. Rep. No. 2035, 87th Cong., 2d Sess. 8 (1962).)

Accordingly, the Commission held that the evident intent of the Congress was that claims compensated under the treaty of peace with Italy be excluded from coverage under Title II of the 1948 Act, and denied the claim by Final Decision. (*Claim of Paul Louis Rosasco, et al.*, Claim No. W-8849, Dec. No. W-21542.)

In the Matter of the Claim of

Claim Nos. W-808
W-809

Decision No. W-2963

ARIS GLOVES, INC.

Under Title II of the War Claims Act of
1948, as amended by Public Law 87-846

"Special measures" as used in Section 202(a), Title II of the 1948 Act means a wartime (World War II) confiscation of American-owned property located in a covered area which was under Communist control at the end of hostilities, thereby precluding restoration, and for which loss compensation has not been provided previously.

Losses arising in Czechoslovakia which were within purview of Title IV of the 1949 Act did not result from "special measures" within meaning of Section 202(a) of the Act.

Claims for property losses under Section 202(a) expressly limited to those arising during statutory period, beginning September 1, 1939, and ending May 8, 1945 in Europe, and beginning July 1, 1937 and ending September 2, 1945 in territories formerly occupied by Japan.

Awards to claimants certified to the Commission by the Small

Business Administration as being small business concerns, paid in full pursuant to Section 213(a)(1).

Federal tax benefits received on account of war losses deductible from certain awards under Section 206(b) of the Act.

PROPOSED DECISION

These claims, in amounts totalling \$1,693,585.00, under Section 202(a), Title II of the War Claims Act of 1948, as amended, are based upon the loss of glove factories, machinery, equipment and inventory located at Johanngesorgstadt, Saxony, now in the Soviet Zone of Germany, and Breitenbach and Baerringen, Czechoslovakia. Claimant, ARIS GLOVES, INC., a corporation organized under the laws of the State of California, is a national of the United States within the meaning of Section 201(c) of the Act.

Section 202(a) of the Act authorizes the Commission to determine the validity and amount of claims of nationals of the United States for:

loss or destruction of, or physical damage to, property located in . . . Czechoslovakia . . . Germany . . . which loss, destruction, or physical damage occurred during the period beginning September 1, 1939, and ending May 8, 1945 . . . *Provided further*, That such loss, destruction, or damage must have occurred, as a direct consequence of (1) military operations of war or (2) special measures directed against property in such countries or territories during the respective periods specified, because of the enemy or alleged enemy character of the owner, which property was owned, directly or indirectly, by a national of the United States at the time of such loss, damage, or destruction . . . (76 Stat. 1107 (1962); 50 U.S.C. App. 2017a (1962).)

Claimant alleges losses as a direct consequence of "special measures" applied to its properties because it was considered an enemy under the laws of Germany.

The meaning of the term "special measures," as used in Section 202(a) of the Act, is evident upon examination of the legislative history of H.R. 7283 which, upon enactment, became Public Law 87-846.

During the course of consideration of this bill in the Congress, the following amendment to Section 202(a) was proposed:

and provided further, that any such property lost or damaged during the respective periods specified, and then owned, directly or indirectly by a national of the United States, which property has not been physically and effectively restored to the use of such national of the United States since the date of the original loss or damage for any reason beyond the control of such national,

shall, for the purposes of the determination to be made by the Commission under this title, be deemed to have been totally lost during the respective periods specified herein, and the award in any such case shall be in the amount of such total loss, less any amounts to be deducted pursuant to Sec. 206 of this title, including any amount theretofore paid to such national out of any other Fund administered by the Commission under the International Claims Settlement Act of 1949, as amended.

At the request of the House Committee on Interstate and Foreign Commerce for a report on the proposed amendment the Commission, speaking for the Executive Branch, opposed enactment on the ground that the proposal would extend coverage to postwar nationalization claims. It was pointed out that the net effect of the proposed amendment would be to authorize satisfaction of unpaid balances of awards granted by the Commission on nationalization claims against Czechoslovakia under Title IV of the International Claims Settlement Act of 1949, as amended, (72 Stat. 527 (1958) ; 22 U.S.C. § 1642 (1958)) and thereby defeat the purpose of the legislation. The Executive Branch view was that the War Claims Fund should be reserved for claims arising out of wartime actions undertaken by former enemies of the United States, in keeping with the philosophy of the War Claims Act of 1948, as amended.

Since the Congress rejected the amendment, it is proper to conclude that it did not intend Public Law 87-846 to be the vehicle for compensating claimants whose claims are within the purview of Title IV of the International Claims Settlement Act of 1949, as amended. To indicate the Congressional intent with respect to the meaning of "special measures," the House Committee on Interstate and Foreign Commerce included the following statement in its favorable report on H.R. 7283:

Subsection (2) of section 202 directs the Foreign Claims Settlement Commission to receive and determine the validity and amount of claims of nationals of the United States for loss or destruction of or physical damage to property (as defined) located in certain defined areas in Europe, or in areas attacked or occupied by the Japanese military forces. The dates within which losses must have occurred from German action are the dates during which hostilities occurred during World War II; the dates within which losses must have occurred from Japanese action are the dates during which hostilities occurred in the Far East before and during World War II.

The loss, damage, or destruction must have resulted from military operations of war, or special measures directed against enemy property. Thus, claims based on wartime confiscations of property of U.S. nationals which has not been physically and effectively restored to the

use of such nationals since the date of original loss or damage, for which compensation has not been provided previously, and which are otherwise eligible are deemed compensable.

For example, if a property located in an area of Germany now subject to Communist control and owned, directly or indirectly, at the outbreak of World War II by a national of the United States was taken or confiscated by the Germans during the war, and, if because of treaty provisions made with reference to or political conditions existing in an area of Germany now subject to Communist control at the end of hostilities, such plant was never effectively restored to the U.S. national and said national has not been paid since the original taking by Germany for the amount of the loss sustained, a claim for the total amount of such uncompensated loss shall be allowable under this section. (H.R. Rep. No. 2035, 87th Cong., 2d Sess. 10 (1962).)

Upon careful consideration of this matter, including the legislative history of the Act, the Commission holds that the Congress intended "special measures" to mean a wartime (World War II) confiscation of American-owned "property" (as defined by Section 201(d) of the Act) located in an area specified in Section 202(a) of the Act, which area was under Communist control at the end of hostilities, and which property could not have been restored because of treaty provisions or political conditions existing in that area at the end of hostilities. It was not intended to apply to property in areas, such as West Germany and Czechoslovakia, where statutes enacted after the cessation of hostilities nullified the wartime confiscations of Germany and made provision for restoration of the properties to lawful owners. It was intended to apply to American-owned property subjected to a wartime confiscation and located at the end of hostilities in an area under Communist control, such as the Soviet Zone of Germany, which circumstances precluded restoration.

Claim No. W-809

The Commission finds on the basis of the evidence of record that claimant owned directly Steinberger Bros., a German firm, which in turn owned land, a glove factory, and certain machinery in Johannegeorgenstadt, Germany. The record shows that following the entry of the United States into World War II Germany confiscated all of claimant's property in Johannegeorgenstadt, Germany. After hostilities ceased, this property was located in the Soviet Zone of occupation and was never restored to claimant because of the treaty provisions and political conditions existing at the end of hostilities; nor has claimant ever received any payment from any source for the loss sustained as a result of the

confiscation by Germany. It is therefore concluded that claimant sustained a loss of property in Johanngeorgenstadt, Germany, as a result of "special measures" within the meaning of Section 202(a) of the Act, and that claimant is entitled to compensation for that loss. The sole remaining question in this claim is the amount of claimant's loss.

Claimant asserts that its assets in Johanngeorgenstadt, Germany had a value of \$618,632.00 at the time of loss. In support thereof, claimant has submitted the following evidence: (a) a detailed report prepared by the American Appraisal Company with respect to the fixed assets (land, buildings, machinery and equipment) of the Johanngeorgenstadt plant; (b) its balance sheet of April 30, 1939; (c) affidavits of two former officials who had knowledge of the Johanngeorgenstadt plant; (d) an affidavit of Mr. Robert Stanton, principal officer of claimant; and (e) an affidavit of a certified public accountant who had visited the Johanngeorgenstadt plant prior to 1939.

Having carefully considered the foregoing evidence, the Commission concludes that the value of claimant's fixed assets in Johanngeorgenstadt, Germany on the date of loss is best reflected by the detailed report of the American Appraisal Company. The Commission therefore finds that claimant's fixed assets in Johanngeorgenstadt, Germany had the following values on the date of the original taking by Germany:

| | |
|-------------------------------|---------------------|
| Land ----- | \$34,000.00 |
| Buildings ----- | 301,800.00 |
| Machinery and equipment ----- | 164,700.00 |
| Total ----- | \$500,500.00 |

Claimant states that the report of the American Appraisal Company did not include stocks of raw materials and supplies, goods in process and finished products, accounts and bills receivable, good will and intangible assets. An examination of the report confirms claimant's statements in these respects. Claimant alleges that its Johanngeorgenstadt plant included the following current assets for which it should be compensated:

| | |
|----------------------------------|---------------------|
| Inventory ----- | \$96,085.37 |
| Cash on hand ----- | 13,940.43 |
| Accounts receivable ----- | 14,412.00 |
| Investments ----- | 5,695.50 |
| Claims for refund of taxes ----- | 17,999.58 |
| Total ----- | \$148,132.88 |

Claimant relies upon the affidavits of the certified public accountant, its two former officials and its principal officer to support its claim for these alleged losses in the amount of \$148,132.88.

With respect to claims arising in Europe, Section 202(a) of the Act provides only for certain losses of property which "occurred during the period beginning September 1, 1939, and ending May 8, 1945" as a direct consequence of "military operations of war" or "special measures." As used in the Act, "property" is defined by Section 201(d) to mean "real property and such items of tangible personalty as can be identified and evaluated." (76 Stat. 1107 (1962); 50 U.S.C. App. 2017 (1962).)

The affidavit of Mr. Albert D. Berning, the certified public accountant, contains no reference to losses of current assets. Mr. Berning states "on the basis of 1939 figures and value" that claimant suffered a loss of approximately \$650,000 with respect to its Johannegeorgenstadt plant.

The affidavit of Mr. Cadwell B. Bine, former Secretary-Treasurer of claimant, merely confirms the value of the fixed assets set forth in the report of the American Appraisal Company, and the items constituting current assets in the aggregate amount of \$148,132.88, as shown in the balance sheet of April 30, 1939. The affidavit of Mr. Hans Hahn, former chief accountant of claimant, contains the statement that in 1939 claimant owned all the land and buildings referred to in the appraisal report "plus large amounts of machinery, cash, equipment, and inventory," having an approximate value of \$650,000.00. However, Mr. Hahn fails to indicate what amounts of cash and inventory, if any, were lost, damaged or destroyed during the statutory period, September 1, 1939 to May 8, 1945.

The affidavit of claimant's principal officer, Mr. Robert Stanton, does not appear to be based on personal knowledge. Mr. Stanton reiterates that the appraisal report did not include raw materials, supplies, goods in process and finished products, accounts and bills receivable, good will and other intangible assets, and states that the current assets lost by claimant amounted to \$148,132.88.

Upon consideration of the foregoing evidence, the Commission concludes that the record does not warrant the finding that claimant sustained a loss of raw materials, supplies, goods in process, finished goods, inventory or cash during the statutory period with respect to its Johannegeorgenstadt plant. Accordingly, the portion of the claim based upon these items of property is denied.

The Commission has considered the legislative history of the Act, and holds that losses of intangible personalty, such as good will, claims for refund of taxes, accounts and bills receivable, and other commercial credits, were not intended by the Congress to be compensable under Title II of the Act. From a review of

the entire record, it does not appear that the item, investments, was other than intangible personalty. Consequently, the Commission finds that the portion of the claim for good will and intangible assets, for refund of taxes, for accounts and bills receivable, and for investments, is not compensable under Title II of the Act, and accordingly, it is denied.

It appears from the record that claimant received the aggregate amount of \$37,971.48 in Federal tax benefits on account of the same loss which is the subject of Claim No. W-809.

Section 206(b) of the Act provides as follows:

Each claim in excess of \$10,000 filed under this title by a corporation shall include a statement under oath disclosing the aggregate amount of Federal tax benefits derived by such corporation in any prior taxable year or years resulting from any deduction or deductions claimed for the loss or losses with respect to which such claim is filed. In determining the amount of any award where the allowable loss exceeds \$10,000 there shall be deducted an amount equal to the aggregate amount of Federal tax benefits so derived by the claimant. For the purposes of this subsection, such Federal tax benefits shall be the aggregate of the amounts by which claimant's taxes for such year or years under Chapters 1, 2A, 2D, and 2E of the Internal Revenue Code of 1939, or subtitle A of the Internal Revenue Code of 1954 were decreased with respect to such loss or losses. Any payments made on an award reduced by reason of this subsection shall be exempt from Federal income taxes. (76 Stat. 1110 (1962); 50 U.S.C. App. 2017a (1962).)

In accordance with the foregoing section of the Act, the amount derived by claimant in the form of Federal tax benefits must be deducted since claimant is a corporation and its allowable loss exceeds \$10,000.00. The Commission therefore finds that claimant is entitled to an award in the amount of \$462,528.52.

On October 29, 1964, the Small Business Administration certified that claimant was a small business concern pursuant to the provisions of Section 213(a) (1) of the Act.

The Commission has decided that an award under Title II of the Act shall not be increased by interest. (See *Claim of Bruno Adamski*, Claim No. W-1184, Dec. No. W-1, 20 FCSC Semiann. Rep. 37 (Jan.-June 1964).) Accordingly, no interest will be allowed in this claim.

Claim No. W-808

This claim is based upon the asserted loss of two factories, machinery, and inventory located at Breitenbach and Baerringen, Sudetenland, an area which was part of Czechoslovakia, but which

was incorporated into the Third German Reich on September 29, 1938, following the Munich Agreement.

On January 15, 1940, the German Government issued a "Decree Concerning the Treatment of Enemy Property." This decree and the amendments which followed governed the treatment of property in Germany owned, either directly or indirectly, by enemies of Germany. Following the entry of the United States into war with Germany on December 11, 1941, amendments to this decree were added to include the property of American citizens. Pursuant to these decrees, claimant's factories located in Czechoslovakia were confiscated by the German Government in 1941.

At the end of hostilities the exiled friendly Czechoslovakian Government headed by Edvard Benes returned to power in Czechoslovakia. Immediately, the Benes Government nullified the wartime confiscations, and the property transfers made under duress, during Germany's occupation of Czechoslovakia; placed all such properties under National Administration; and provided procedures for restoring the properties to their lawful owners. (Decree No. 5/45 Sb. of May 19, 1945, and Decree No. 128/46 Sb. of May 16, 1946.)

The record includes the claim filed by claimant against the Government of Czechoslovakia under Section 404, Title IV of the International Claims Settlement Act of 1949, as amended. That statute provided for certain claims of nationals of the United States against Czechoslovakia for the nationalization or other taking of property on or after January 1, 1945. In that claim the evidence established that claimant's properties had been placed under National Administration and that claimant had filed a petition for restitution of its properties in Czechoslovakia pursuant to the said decrees. It appeared that in December 1949 Czechoslovakia suspended all such proceedings in anticipation of a claims settlement agreement with the United States. Since Czechoslovakia never resumed such proceedings thereafter, the Commission held that claimant's properties had been taken by Czechoslovakia on December 21, 1949, and granted claimant an award for those losses. (*Claim of Aris Gloves, Inc.*, Claim No. CZ-1170, Dec. No. CZ-3035, 17 FCSC Semiann. Rep. 239 (July-Dec. 1962), hereafter cited as CZ-1170.)

Under date of March 10, 1965, counsel for claimant submitted to the Commission a communication in the nature of a brief.

Counsel contends that claimant's properties in Czechoslovakia, like those in the Soviet Zone of Germany, were lost as a result of "special measures." He states that claimant's properties in Czechoslovakia were seized by Germany during World War II

and were never effectively restored to claimant after hostilities ended. The Commission's attention is directed by counsel to its decision on the said claim against Czechoslovakia (CZ-1170) in which the Commission found that all of the claimant's assets in Czechoslovakia "were placed under National Administration in 1945 by the Government of Czechoslovakia and never restored to claimant." In the course of determining claims against Czechoslovakia, the Commission has consistently held: (a) that the placement of property under National Administration does not, in and of itself, constitute a taking of property (14 FCSC Semiann. Rep. 134 (Jan.-June 1961)); and (b) that property under National Administration which had not been returned prior to December 21, 1949 was effectively taken on that date. (*Id.* at p. 146.)

Counsel construes "special measures" to mean a seizure of assets by Germany during World War II, followed by a seizure "by another hostile or unfriendly foreign power at the end of the War."

In this connection, counsel points to statements contained in House Report No. 2035 (quoted above in this decision) and a discussion on the floor of the Senate during consideration of H.R. 7283, the bill enacted as Public Law 87-846. The discussion on the Senate floor related to property in Czechoslovakia which had been confiscated by the Germans during World War II and, like property in the Soviet Zone of Germany, was under Communist control at the end of hostilities. Cases involving areas of Czechoslovakia which were under Communist control at the end of hostilities have been considered by the Commission in the administration of claims against Czechoslovakia for the taking of property on or after January 1, 1945, under Title IV of the International Claims Settlement Act of 1949, as amended. These claims arose in that part of Czechoslovakia which was occupied by the military forces of the U.S.S.R. as of October 1944 and was formally ceded to the U.S.S.R. by treaty dated June 29, 1945. The Commission consistently held that: (a) claims for war damages were not compensable under Title IV of the 1949 Act (17 FCSC Semiann. Rep. 187 (July-Dec. 1962)); and (b) claims for losses in areas of Czechoslovakia occupied by the U.S.S.R. during the war and ceded to the U.S.S.R. after the war were not compensable in the absence of a showing that the property had been taken by Czechoslovakia between January 1, 1945 and the date of the treaty, June 29, 1945. (*Id.* at p. 182.)

However, the instant claim is to be distinguished from the category of claims that was the subject of the colloquy on the Senate floor.

As noted above, claimant's properties were located in that part of Czechoslovakia which was subject to the jurisdiction of the Benes Government, and not located in the area of Czechoslovakia ceded to the U.S.S.R. on June 29, 1945. Moreover, on the basis of the facts in this case no award would have issued to claimant under Title IV of the International Claims Settlement Act of 1949, as amended, had claimant's properties been located in the area of Czechoslovakia ceded to the U.S.S.R. (17 FCSC Semiann. Rep. 182 (July-Dec. 1962)).

The record does not support claimant's contentions that its properties in Czechoslovakia were lost as a result of "special measures" within the meaning of Section 202(a) of the Act. While claimant's properties may have been the subject of a war-time confiscation, they were not located in that part of Czechoslovakia which was under Communist control at the end of World War II hostilities. At that time, the conditions in the area where claimant's properties were situated were quite different from those that prevailed in the Soviet Zone of Germany. In that area of Czechoslovakia, the Benes Government had nullified the war-time confiscations of Germany in 1945, and had provided procedures for restitution of the properties to their lawful owners in 1946. It was not until long after the cessation of hostilities that Czechoslovakia fell under Communist control.

Claimant's properties in Czechoslovakia had been placed under National Administration in 1945 and possession thereof was never returned to claimant. It is unnecessary to consider the reasons that militated against restoration to claimant for, irrespective of those reasons, it is clear that those reasons had no connection with any treaty provisions or the political conditions that existed in the area at the end of hostilities. Moreover, the Commission held that claimant remained the owner of the properties in Czechoslovakia and that the Government of Czechoslovakia had taken the properties from claimant on December 21, 1949.

The Commission therefore finds that claimant's properties in Czechoslovakia were not lost during World War II as a direct consequence of "special measures" within the meaning of Section 202(a) of the Act.

It appears from counsel's letter of March 10, 1965 that claimant is seeking to recover the unpaid balance of its award for losses resulting from the postwar nationalization of its properties by Czechoslovakia. There are three compelling reasons why claimant cannot succeed in this respect. First, such action by Czechoslovakia occurred outside the period of time prescribed by Section 202(a) of the Act—"beginning September 1, 1939, and ending May 8, 1945." Second, it would clearly be contrary

to the legislative intent as evidenced by the failure of the Congress to enact the said proposed amendment which would have authorized favorable action in such case. Third, the United States is presently negotiating with the Government of Czechoslovakia for the purpose of concluding a final claims settlement agreement covering claims for postwar nationalization of American-owned property by that Government.

Finally, claimant alleges that its properties in Czechoslovakia sustained physical damage during the war. It relies upon the material contained in its claim against Czechoslovakia (CZ-1170). However, an examination of the entire record, including the material in the Czechoslovakian claim, does not disclose any evidence which would warrant a finding that claimant sustained any physical war damage. In his letter of March 10, 1965, counsel states that "the Germans removed from the factory at Potucky '76 complete sewing machine (machines and tables) 548 machines (without tables) and 592 tables (without machines).'" The record in the Czechoslovakian claim (CZ-1170) shows that these items of property were returned to claimant's plant in Czechoslovakia after the war and the award in that claim covered the full value of these items of property. Accordingly, the Commission finds that the record does not establish that claimant sustained a loss, damage or destruction of property in Czechoslovakia within the meaning of Section 202(a) of the Act. For the foregoing reasons, Claim No. W-808 is denied.

AWARD

An award is hereby made to ARIS GLOVES, INC., which has been certified to be a small business concern, in the amount of Four Hundred Sixty-Two Thousand, Five Hundred Twenty-Eight Dollars and Fifty-Two Cents (\$462,528.52). Pursuant to Section 206(b) of the Act, Federal tax benefits have been deducted.

Dated at Washington, D.C.

April 28, 1965.

Special measures.—Section 202(a) of the 1948 Act provided for certain claims for loss or destruction or physical damage to property in certain countries and areas resulting as a direct consequence of military operations of war or special measures

directed against such property because of the enemy or alleged enemy character of the owner.

The foregoing provisions presented a serious legal problem to the Commission since it was not clear from the language of the statute as to what types of claims the Congress contemplated. As indicated by the decision on *Aris Gloves, Inc.*, the Commission resorted to the legislative history of the Act to ascertain the intent of the Congress. The Commission's holding conformed with the legislative intent as evidenced by the favorable House report on H.R. 7283, the bill that became Public Law 87-846. Accordingly, the Commission held that a claim would be within the purview of the "special measures" provisions of the Act if it involved property of an American that had been confiscated during World War II and which was located in an area under Communist control at the end of hostilities so that it could not be restored. Moreover, it had to be a claim "for which compensation was not provided previously," as stated in the House report.

The *Aris Gloves, Inc.* claim involved properties in Germany and Czechoslovakia, which were considered separately for obvious reasons. In the case of the German property, the record showed a confiscation during the war from claimant, an American concern, and the fact that the property was situated in the Soviet Zone of occupation at the end of hostilities, thereby precluding restoration. It may be noted at this point that in West Germany all properties taken by the Germans during the war were returned to their lawful owners. Fortuitously, the property in this case was not in West Germany after the war. With respect to properties in the Soviet Zone of Germany, no action was taken to restore them to their owners, and no provision was ever made to compensate such owners for their losses. On the basis of these considerations, the Commission found that claimant had sustained a loss of its property in Germany as a direct consequence of "special measures," and granted claimant an award for this loss.

However, the circumstances relating to the asserted loss of property in Czechoslovakia were not similar. As the decision states, the Congress had considered and rejected a proposed amendment to the bill authorizing compensation to claimants whose properties were taken by Czechoslovakia after the war and who had received some payments on account of their awards from a limited Czechoslovakian Claims Fund pursuant to Title IV of the 1949 Act. Moreover, claimant's property was located in an area of Czechoslovakia that was not under Communist control at the end of hostilities. Rather, history discloses that it was situated in an area subject to a friendly administration that had provided for the return of all property taken by the Germans during the war. For reasons immaterial to this discussion, claimant's property was never restored. Instead, the property was taken by the Government of Czechoslovakia on December 21, 1949, as stated in the decision, and an award was granted to claimant for this loss under Title IV of the 1949 Act. Thus, in addition to all the other adverse factors, compensation was provided previously for claimant's losses in Czechoslovakia. For the foregoing reasons, the claim for losses in Czechoslovakia was denied.

The Commission has ruled that the *Aris Gloves, Inc.* holding applies to certain claims for losses in the Soviet Zone of Germany, the so-called Eastern Territories of Poland, now a part of the U.S.S.R., Latvia, Estonia, Lithuania, Eastern Rumania and Eastern Czechoslovakia, which are under the jurisdiction of the U.S.S.R., as well as certain claims for losses in North Korea, certain parts of China, and North Vietnam.

Since Berlin was divided into zones like Germany, only certain losses occurring in the Soviet Sector of Berlin could be held to have resulted from "special measures." Property in the western zone of Berlin was subject to the same rules that governed West Germany. Therefore any property situated in the western zone of Berlin that had been taken by the Germans during World War II was returned to its lawful owners after the war. Based upon the holding in the *Aris Gloves, Inc.* decision, the Commission granted an award for property confiscated during the war and located in the Soviet Sector of Berlin at the end of hostilities. (*Claim of Guardian Life Insurance Company of America*, Claim No. W-5595, Dec. No. W-13521; *Claim of Susanne Von Schuching, et al.*, Claim No. W-15519, Dec. No. W-19409, Final Decision entered May 10, 1967.)

Where a claimant was unable to establish a wartime confiscation of his property situated in the Soviet Sector of Berlin, his claim for losses resulting from "special measures" was denied. However, he was granted an award for war damages sustained by this property, which he was able to establish. (*Claim of Eric G. Kaufman*, Claim No. W-7460, Dec. No. W-21347.) In another case, claimant sustained physical war damages to property in West Germany and losses resulting from "special measures" in the Soviet Zone of Germany. (*Claim of American Radiator and Standard Sanitary Corporation*, Claim No. W-18151, Dec. No. W-21451.)

The *Aris Gloves, Inc.* decision was the basis for denying certain claims arising in Yugoslavia. In that case, the Commission held that Public Law 87-846 was not intended as the vehicle for compensating claimants whose claims against Czechoslovakia were within the purview of Title IV of the 1949 Act. Title I of the 1949 Act covered certain claims against Yugoslavia for the nationalization or other taking of property. Accordingly, a claimant whose claim was within the scope of Title I of the 1949 Act but who failed to file thereunder was denied relief under Public Law 87-846. This holding was applied consistently even where claimant alleged that in all other respects his claim satisfied the prerequisites for "special measures" set forth in the *Aris Gloves, Inc.* decision. (*Claim of John Skrabec*, Claim No. W-17619, Dec. No. W-15132, 25 FCSC Semiann. Rep. 40 (July-Dec. 1966).)

Certain losses in Lithuania were held to have resulted from "special measures" and appropriate awards were granted. (*Claim of Paul Masiokas, et al.*, Claim No. W-18819, Dec. No. W-17850, 25 FCSC Semiann. Rep. 41 (July-Dec. 1966); *Claim of the Estate of Charles Luksis, Deceased*, Claim No. W-11785, Dec. No. W-21275.) Similarly, the Commission allowed claims for such losses in North Korea, and in certain areas of China. (*Claim of Richard H. Baird, et al.*, Claim No. W-474, Dec. No. W-1556,

22 FCSC Semiann. Rep. 64 (Jan.-June 1965) ; *Claim of Victor M. Alcone, et al.*, Claim No. W-8398, Dec. No. W-15440.)

However, where property in China had been confiscated during the war but reoccupied by the owner after the war, the claim for losses resulting from "special measures" was denied. (*Claim of Sisters of Charity of St. Joseph's*, Claim No. W-10401, Dec. No. W-10055, 23 FCSC Semiann. Rep. 79 (July-Dec. 1965).) Claims also were denied with respect to property in North Korea confiscated during the war and under Communist control at the end of hostilities because the area in which the property was located came under the jurisdiction of South Korea subsequently and the property was returned to the lawful owners. (*Claim of John L. Boots, et al.*, Claim No. W-10931, Dec. No. W-8987.)

Certain claims arising in Subcarpathian Ruthenia, formerly Czechoslovakia and now part of the U.S.S.R., were held compensable because the losses resulted from "special measures." (*Claim of Max Shonberger*, Claim No. W-20752, Dec. No. W-18326.)

Claims for losses from "special measures" were limited by the statutory requirement that they have occurred within specified periods of time in order to be compensable. Losses in Europe were restricted to those occurring between September 1, 1939 and May 8, 1945, and those in the Far East to the period between July 1, 1937 and September 2, 1945. Thus, although certain claims arising in Indochina might otherwise have been held compensable by reason of "special measures" losses, the claims were denied because the losses did not occur during the statutory period. (*Claim of Esso Standard Eastern, Inc.*, Claim No. W-17526, Dec. No. W-21439.)

In that part of Poland which remained under Polish jurisdiction after the war, provision was made for the return of properties that had been confiscated during the war. Like West Germany and Czechoslovakia, Poland proper was not an area in which losses from "special measures" could be sustained. The Commission had held in the *Aris Gloves, Inc.* decision that it was not the legislative intent to cover such claims in these areas. Accordingly, claims for such alleged losses in Poland proper were denied. (*Claim of Murray Draper*, Claim No. W-4761, Dec. No. W-11503.)

However, the same circumstances did not exist in certain eastern areas of former Germany that had been placed under the administration of Poland. Here, too, political conditions prevented the return of property confiscated during the war. With respect to the postwar taking of property in these areas by Poland, Annex A, paragraph (e) to the Polish Claims Agreement of 1960, appearing at page 759, expressly excluded claims of corporations organized in Germany unless a major part of their assets were taken by Poland. Invariably, this provision resulted in denials of such claims where a major part of the assets never were situated in Poland. Claims of this nature are discussed at page 470. Upon consideration of these circumstances in the light of the facts that the United States was a party to the Polish Claims Agreement of 1960 and that no other provision was ever made for such claims, the Commission held that such losses in

these areas also fall within the meaning of "special measures." (*Claim of Corn Products Company*, Claim No. W-20235, Dec. No. W-21313.)

Small business concerns.—Title II of the 1948 Act included an unusual provision relating to small business concerns. Section 213(a)(1), appearing at page 699, directed the Secretary of the Treasury to pay in full any award granted by the Commission "pursuant to Section 202(a) to any claimant, certified to the Commission by the Small Business Administration as having been, on the date of loss, damage, or destruction, a small business concern within the meaning now set forth in the Small Business Act, as amended." It should be noted that claimants who receive awards under Section 202(d)(1) and (2), relating to death and personal injury claims, have the first priority in being paid in full out of the available funds while small business concerns enjoy the second priority. After these priority awards are paid in full, all other awards receive limited payments and finally pro rata payments from the remaining balance of the available funds.

A number of problems arose in connection with the small business concern status of certain claimants. There were claimants who inherited claims for the loss of small business concerns and those who owned stock interests in corporations that were small business concerns. Generally, if a claimant owned a 100% stock interest in a foreign corporation that was a small business concern on the date of loss, he was deemed to be the small business concern and so certified to the Commission. A holder of less than 100% of the outstanding stock, though his interest was substantial in amount, was not certified as a small business concern. (*Claim of George Aninger*, Claim No. W-13654, Dec. No. W-13955.) However, with respect to inherited property interests, the Commission held that a claimant is not entitled to the priority of a small business concern unless he owned the business at the time of loss. Accordingly, claims inherited from owners of small business concerns after the dates of loss were not given priority payment under Section 213(a)(1) of the 1948 Act. (*Claim of Herman Weber*, Claim No. W-238, Dec. No. W-16547, 25 FCSC Semiann. Rep. 37 (July-Dec. 1966); *Claim of Harold Nebenzal*, Claim No. W-4214, Dec. No. W-20098; *Claim of Helen Erdos, et al.*, Claim No. W-8498, Dec. No. W-17281.)

The same rule was applied to assignments from small business concerns. Thus while a small business could assign its claim pursuant to Section 203 of the 1948 Act, its status as a small business concern was not assignable. Accordingly, the assignee in such a case was not given priority payment. (*Claim of Actna Casualty and Surety Company, et al.*, Claim Nos. W-6810 and W-9544, Dec. No. W-19969.)

In one case, an award was certified for priority payment to the Secretary of the Treasury based upon a certification from the Small Business Administration that claimant was a small business concern. Subsequently, the Small Business Administration notified the Commission that it had withdrawn its previous certification on the basis of new information and that claimant was not a small business concern. The Commission issued an Amended Final Decision reflecting that claimant was not a small

business concern, and the previous award certified for priority payment was withdrawn. Instead claimant's award was certified without priority. (*Claim of Standard Car Finance Corporation*, Claim No. W-5041, Dec. No. W-19225.)

Federal tax benefits.—Section 206(b) of the 1948 Act (appearing at page 698) provided for the reduction of an award by the amount a claimant corporation had received in the form of Federal tax benefits on account of the same losses. Whenever an award was so reduced, it was exempt from Federal income taxes. Pursuant to Section 206(b), the Commission required an appropriate statement under oath from each such corporation with allowable losses in excess of \$10,000. Each corporation to which the statute applied was asked to supply the following information:

1. In which taxable year or years did the corporation assert deductions in its Federal income tax returns for the losses that are the subject of its claim under Public Law 87-846? Please indicate the amount of deductions for each such year, and show the extent to which the deductions were asserted for each of the properties involved in the claim under Public Law 87-846.

2. Did the corporation ever recover any of the subject properties? If yes, please explain in detail how this matter was adjusted in its Federal income tax returns.

3. What was the aggregate net tax savings the corporation derived as a result of such deductions, including the effect of any net operating loss deductions taken with respect to any of the properties involved in its claim under Public Law 87-846?

4. If more than one property was lost, damaged, or destroyed, identify the amount of actual tax savings attributable to each property. If a recovery took place in respect of such properties (within the meaning of section 127 of the Internal Revenue Code of 1939 or section 1331 of the Internal Revenue Code of 1954), state the amount which was included in income attributable to each property and which resulted in reducing the prior year's tax savings.

5. If the corporation elected to have the provisions of sections 1333 and 1335 of the Internal Revenue Code of 1954 apply to the recovery of any of the war loss properties, please indicate whether the recomputation of tax for the prior year resulted in a tax saving. If a tax saving resulted, indicate the year or years and the amount or amounts thereof of such savings.

A statement under oath from an officer of a corporation to the effect that the corporation had derived no Federal tax benefits on account of the losses claimed was accepted and acted upon by the Commission. Accordingly, no deduction in the award was made in any such case, but the award was subject to Federal income taxes. (*Claim of Agricultural Insurance Company*, Claim No. W-8561, Dec. No. W-20013.)

In the case of large industrial corporations with holdings in various countries, problems arose in connection with the Federal

tax benefits they had derived on account of the losses claimed before the Commission. Frequently, such corporations had derived tax benefits from many losses abroad, some of which were not compensable under Title II of the 1948 Act. Their income tax reports covered all of their losses, thereby requiring some apportionment in order to determine the extent of their tax benefits with respect to allowable losses.

One such claim involved certain losses in Germany and Poland, some of which were not compensable under the 1948 Act. The Commission determined the amount of the allowable losses based upon claimant's books and records and other evidence, and the net tax benefits which claimant had derived was found by reducing claimant's overall war tax benefits by the taxes it paid on properties it had recovered. A ratio was found between the amount allowable under the 1948 Act and the value of claimant's investments which was used to determine its Federal tax benefits. This ratio was applied to the net tax benefits claimant had received to find the apportioned amount thereof applicable to the losses allowed by the Commission. (*Claim of Gillette Company*, Claim No. W-17977, Dec. No. W-18197.)

In another case, the Commission had, at first, accepted the statement of an officer of claimant corporation concerning its Federal tax benefits, and issued a Proposed Decision on this basis. Claimant objected, urging that the application of the formula for apportionment would result in a more favorable award. The Commission reaffirmed its holding with respect to apportionment of Federal income tax benefits under certain circumstances and made an appropriate adjustment of the award in the Final Decision. (*Claim of Mobil Oil Corporation*, Claim No. W-2299, Dec. No. W-15066.)

In the Matter of the Claim of

Claim No. W-20197
Decision No. W-18802

**AMERICAN-HAWAIIAN STEAMSHIP
COMPANY**

Under Title II of the War Claims Act of 1948,
as amended by Public Law 87-846

Claim under Section 202(b) for loss of four ships denied, where amounts received from United States Government under terms of charter parties and settlement of subsequent libel proceedings found to provide full compensation for the loss.

PROPOSED DECISION

This claim, for \$108,810.91, under Title II of the War Claims Act of 1948, as amended, is based upon the loss of the SS *Honolulu*, SS *Oregonian*, SS *Montanan* and SS *Alaskan* during

World War II. Claimant, AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, organized in 1899 under the laws of the state of New Jersey, is a national of the United States within the meaning of Section 201(c) of the Act.

Section 202 of the Act directs the Commission to determine the validity and amount of claims of nationals of the United States for:

(b) damage to, or loss or destruction of, ships or ship cargoes directly or indirectly owned by a national of the United States at the time such damage, loss, or destruction occurred, which was a direct consequence of military action by Germany or Japan during the period beginning September 1, 1939, and ending September 2, 1945; no award shall be made under this subsection in favor of any insurer or reinsurer as assignee or otherwise as successor in interest to the right of the insured (76 Stat. 1108 (1962); 50 U.S.C. App. 2017a (b) (1964).)

Based upon the evidence of record, the Commission finds that claimant owned the SS *Honolulan*, SS *Oregonian*, SS *Montanan* and SS *Alaskan* which were destroyed as a direct consequence of military action on July 22, 1942, September 13, 1942, June 3, 1943, and November 28, 1942, respectively. At the time of their respective sinkings, each vessel was under a requisition time charter party to the United States of America.

Pursuant to the terms of the charter parties, claimant received from the Government of the United States the following amounts of money: \$620,172.75, \$527,406.75, \$477,403.50 and \$582,002.25, for the loss of the SS *Honolulan*, SS *Oregonian*, SS *Montanan* and SS *Alaskan*, respectively.

Thereafter, claimant commenced four libel proceedings (Docket Nos. 131-343, 132-352, 133-112 and 133-397) to recover from the United States additional compensation for the loss of the four vessels requisitioned and insured by the War Shipping Administration. After instituting the libels, a compromise settlement was agreed upon concerning the libels pertaining to the loss of the SS *Honolulan*, SS *Oregonian* and SS *Montanan* between the Government of the United States and claimant the terms of which were made part of the District Court's Final Decree in these cases. In accordance therewith, claimant received the additional sum of \$385,830.14 for the loss of the SS *Honolulan*, \$328,117.32 for the loss of the SS *Oregonian* and \$297,008.63 for the loss of the SS *Montanan*. The court in the remaining libel for the loss of the SS *Alaskan* found the total value of that vessel to be \$983,250.00. (See *American-Hawaiian Steamship Co. v. United States*, 85 F. Supp. 815 (S.D. N.Y. 1949), aff'd, 191 F. 2d 26 (2d Cir. 1951).) All of the pertinent documents relating to the four

libels instituted by claimant in the District Court for the Southern District of New York have been associated with and made a part of the record of this claim.

Based upon the entire record, the Commission finds that claimant has recovered the total sum of \$1,006,002.89 for the loss of the SS *Honolulan*, \$855,521.07 for the loss of the SS *Oregonian*, \$744,412.13 for the loss of the SS *Montanan* and \$983,250.00 for the loss of the SS *Alaskan*.

Claimant now asserts claim for \$408,810.91 which is the balance remaining from the gross amount claimed against the United States for the loss of these vessels and the total sum of money which claimant has received for their loss.

In determining the value of each of the vessels at the time of their respective sinkings, the Commission has considered all the evidence of record, including statements by officers of the AMERICAN-HAWAIIAN STEAMSHIP COMPANY.

The Commission has consistently held that compensation for losses sustained shall be based upon the actual value of the property at the time of loss. (See the *Claim of California Texas Oil Corporation*, Claim No. W-8616, Dec. No. W-10424.)

Section 206(a) of the Act provides as follows:

In determining the amount of any award there shall be deducted all amounts the claimant has received on account of the same loss or losses with respect to which an award is made under this title. (76 Stat. 1110 (1962) ; 50 U.S.C. App. 2017 1(a) (1964).)

The Commission finds that claimant has been fully compensated for any loss sustained as the result of the sinking of the SS *Honolulan*, SS *Oregonian*, SS *Montanan* and the SS *Alaskan*.

Accordingly, it is concluded that this claim is not compensable under Title II of the War Claims Act of 1948, as amended. Therefore, this claim is denied in its entirety.

Dated at Washington, D.C.

November 30, 1966.

FINAL DECISION

This claim for \$408,810.00, under Section 202(b), Title II of the War Claims Act of 1948, as amended, is based upon the sinkings of the SS *Honolulan*, SS *Oregonian*, SS *Montanan* and SS *Alaskan*, as a result of military action during World War II.

The Commission issued its Proposed Decision on November 30, 1966, denying this claim for the reason that claimant had been compensated in full by the Government of the United States for the loss of the above-named ships. Claimant filed objections

to the Proposed Decision and requested an oral hearing which was held on February 10, 1967.

At the oral hearing counsel for claimant contended and submitted evidence in support of his contention that the values of the four ships should be determined on the basis of \$100.00 per deadweight ton.

After carefully considering this matter in light of all the evidence of record and after reviewing other decisions in which awards were granted for the loss of ships pursuant to the provisions of Section 202(b) of the Act, the Commission finds that the values determined for the ships involved in this claim are fair and equitable and are in accord with standards applied in other similar claims. This review confirms that the values of ships determined in claims under Section 202(b) of the Act, including this claim, were the values of the ships at the time of loss. Accordingly, the Commission finds that there is no basis for determining that the ships herein claimed should be valued at \$100.00 per deadweight ton and concludes that the record does not warrant an increase in the respective values of the four ships in this claim, as found by the Commission.

It is, therefore,

ORDERED that the Proposed Decision be, and the same is, affirmed as the Final Decision of the Commission in this claim.

Dated at Washington, D.C.

May 10, 1967.

Ships.—Section 202(b) of the 1948 Act provided for certain claims based upon the loss of “ships or ship cargoes.” The term “ships” was not defined in Section 201 of the 1948 Act, captioned “Definitions.” However, a careful examination of other related sections of the statute permitted the Commission to construe the term in accordance with the evident intent of the Congress.

The matter was brought squarely before the Commission in connection with a claim for the loss of a “Chris-Craft” and a dinghy in France. Since France was a country that was not mentioned in Section 202(a) of the 1948 Act, claimant could recover only if he sustained a loss of “ships or ship cargoes” under Section 202(b). It should be noted that this section did not require

that the loss have occurred in a specified area in order to be compensable, as was the case under Section 202(a). Thus the loss of a ship in a French harbor, for example, would be within the purview of Section 202(b) although the loss of other property in France would not be covered under Section 202(a). A further distinction between Section 202(a) and Section 202(b) was the fact that the former covered certain losses that occurred as a direct consequence of "military operations of war" or "special measures" whereas the latter provided for certain losses resulting from "military action by Germany or Japan."

The Commission considered that Section 202(c) of the statute provided for certain net losses in connection with insured "ships," and that Section 202(d) provided for certain claims arising on "any vessel engaged in commerce on the high seas." The fact that the Congress included ships and ship cargoes in one section indicated that commercial vessels were thus being identified. However, it was clear that the Congress did not intend that a ship mean only a "vessel" as used in Section 202(d). The remedial nature of the 1948 Act warranted a liberal interpretation. Accordingly, the Commission held that the term "ships" means vessels engaged in water-borne commerce. (*Claim of Clough B. Lundbeck*, Claim No. W-589, Dec. No. W-249, 21 FCSC Semiann. Rep. 71 (July-Dec. 1964).) That claim was denied because the dinghy, being a type of rowboat, could not be deemed to be a "ship," and there was no evidence to establish that the "Chris-Craft" was engaged in water-borne commerce.

Ship cargoes.—The related question as to what constitutes "ship cargoes" within the meaning of Section 202(b) of the 1948 Act also presented issues to be resolved by the Commission. Here again, the statute included no definition of the term. This question was answered by considering other Federal statutes pertaining to cargoes and commercial practices of shippers and shipping concerns. The Commission held that "ship cargoes" means "goods which were placed in the care and custody of a carrier by water pursuant to a contract of carriage, generally evidenced by a bill of lading or other document of title." A claim for clothing, personal effects and other personal property situated in the cabin of claimant's predecessor, as opposed to the custody of the carrier, was therefore denied. (*Claim of Lyman Fladger, et al.*, Claim No. W-14562, Dec. No. W-10395.)

The distinction between a claim for "ship cargoes" under Section 202(b) and a claim for the loss of personal property of a passenger on a vessel under Section 202(d) (3) is discussed on page 644 in connection with the topic, "Passenger property claims."

Applying liberal rules of statutory construction, the Commission concluded that unused provisions, consumable stores and bunker fuel aboard ships constituted "ship cargoes" under Section 202(b) of the 1948 Act. In determining the value of such cargoes, the Commission considered, *inter alia*, the procedures for provisioning such ships, average consumption per day, per voyage and per annum, and information concerning the amount of provisions normally placed aboard ships. (*Claim of Mobil Oil Corporation*, Claim No. W 674, Dec. No. W 21519.) Similarly, radio equipment installed on ships pursuant to lease agreements was con-

sidered to be included in the term "ship cargoes." (*Claim of International Telephone and Telegraph Corporation*, Claim No. W-22742, Dec. No. W-20057, Amended Proposed Decision entered on March 8, 1967.)

Place of ship or cargo loss.—As indicated under "Ships" above, Section 202(b) did not restrict compensable losses to those that occurred in specified areas. With respect to the Far East, Section 202(a) limited claims to those that arose "in territory occupied or attacked by the Imperial Japanese military forces (including territory to which Japan has renounced all right, title, and claim under Article 2 of the Treaty of Peace Between the Allied Powers and Japan) except the island of Guam." Thus, losses in Japan proper were denied under Section 202(a) because they did not occur in territory that was occupied or attacked by Japan, or in territory that was renounced by Japan. (*Claim of Robert Faulkner Moss*, Claim No. W-2730, Dec. No. W-164, 21 FCSC Semiann. Rep. 67 (July-Dec. 1964).) The areas that Japan renounced under Article 2 of its treaty of peace are Korea, Formosa and certain adjacent islets.

An interesting question arose in connection with the loss of personalty that apparently occurred in Japan. It appeared that claimant had shipped furs from China to New York, requiring transshipment at a port in Japan. When the furs reached Japan, authorities there removed the furs and stored them without the knowledge and consent of the owner. Subsequently the furs were destroyed as a result of Japanese military action. The Commission held that the furs had acquired the status of cargo "in transit" to New York when they were committed to the common carrier for transportation, and that the placing of the cargo in the warehouse without the consent of claimant did not deprive the cargo of its "in transit" status. An award was made for the value of the furs, less amounts received previously from the Government of Japan and from an insurance company on account of the same loss. (*Claim of Joseph Rotberg & Co., Inc.*, Claim No. W-5245, Dec. No. W-5713, citing *Claim of Armstrong Cork Company*, Claim No. IT-10000, Dec. No. IT-118, 10 FCSC Semiann. Rep. 138 (Jan.-June 1959), which is discussed on page 277.)

The same result obtained in another case which had been denied initially on the ground that the loss occurred in Japan and was not compensable under Section 202(a). Upon reconsideration following the holding in the *Rotberg* decision, *supra*, the claim was allowed. (*Claim of Little-Jones Company*, Claim No. W-1192, Dec. No. W-287, Amended Proposed Decision entered on October 6, 1965.)

Date of ship or cargo loss.—Section 202(b) provided that the loss of "ships or ship cargoes" must have occurred "during the period beginning September 1, 1939, and ending September 2, 1945," as one prerequisite for an award. This statutory period begins when World War II started in Europe upon the invasion of Poland, and ends when Japan formally surrendered in the Far East. Although Section 202(a) covered losses in the Far East beginning July 1, 1937, the start of the Sino-Japanese War, it appeared that this war was confined to land and that no ship or cargo losses were sustained by Americans from military action in

the Far East between July 1, 1937 and September 1, 1939. The Commission's experience with claims bears out the fact that no such losses were sustained by Americans.

This very question of date of loss was presented in a claim involving the loss of a ship in a German harbor. The record showed that the ship had taken on cargo at the harbor and was about to proceed to the United States. The ship was seized in November 1938, and sold in February 1939 pursuant to a court order. This claim was denied because it was clear that "the loss did not occur as a result of any action within the statutory period of time." (*Claim of Elizabeth Riis, et al.*, Claim No. W-2195, Dec. No. W-202, 21 FCSC Semiann. Rep. 68 (July-Dec. 1964).)

Valuation of ships.—A number of difficult problems arose in connection with the evaluation of ships. The Commission's policy of long standing was that each claim be decided on its own merits. Accordingly, the valuation warranted by the circumstances in the case being considered was the one found in that case. Experience has shown that this policy is fair and equitable and in conformity with the legislative intent. Generally, however, it appears that the Commission applied three different methods in the course of determining the values of ships on the dates of damage, loss or destruction. Except where required by the statute, the values determined by the Commission with respect to all types of property have consistently been the values that existed on the dates of loss. (*Claim of California Texas Oil Corporation*, Claim No. W-8616, Dec. No. W-10424, 24 FCSC Semiann. Rep. 18 (Jan.-June 1966).)

Court-determined values of ships.—The first method employed by the Commission involved the use of court decisions in which the values of the very ships in question were litigated in suits against the Government of the United States. In some of these cases the suits were terminated upon execution of agreements by the litigants fixing mutually acceptable ship values. In other cases the courts actually found the ship values on the dates of loss on the basis of the evidence presented. The Commission considered this method superior to the other methods, irrespective of whether the suits were terminated by judgments of the courts or stipulations of the parties. As an administrative agency, the Commission felt it was entirely justified in finding the values of the ships to be the precise amounts determined by the courts in suits against the Government of the United States or stipulated by the litigants.

It should be noted that in a number of such cases, the Commission denied the claims because the amounts received by claimants pursuant to the lawsuits constituted full payment. Under Section 206(a) of the 1948 Act, the Commission was directed to reduce an award by "all amounts the claimant has received on account of the same loss or losses with respect to which an award is made under this title."

In one such case involving the loss of one ship, the Court of Claims determined in a suit against the United States the fair market value of the ship on the date of loss. It rejected the contention of plaintiff that the value should be based upon reproduction costs less depreciation. Plaintiff filed a claim with the Com-

mission under Section 202(b) in which it requested \$103,000 more than it had received pursuant to the lawsuit. The Commission found the value of the ship on the date of loss to have been the same as found by the Court, and denied the claim because claimant had been fully compensated. (*Claim of Oliver J. Olson & Co.*, Claim No. W-17464, Dec. No. W-17571.) The same result obtained in another case in which claimant had terminated its suit against the United States by stipulating as to the fair market value of the ship on the date of loss. Due to certain technicalities of the law then in effect, this plaintiff-claimant was unable to recover the amount so stipulated. Accordingly, the Commission entered an award on the basis of the stipulation, reduced by the amount of Federal tax benefits claimant had received on account of the same loss. (*Claim of Matson Navigation Company*, Claim No. W-1440, Dec. No. W-10075, 23 FCSC Semiann. Rep. 78 (July-Dec. 1965).) Section 206(b) of the 1948 Act required certain reductions in awards for Federal tax benefits derived by claimants on account of the same loss or losses. This matter is discussed at page 629.

The same technical reasons barred recovery in the courts in another case in which plaintiff and the United States had stipulated as to the fair market value of a ship and cargo. The Commission entered an award in favor of claimant and reduced the award by Federal tax benefits plaintiff-claimant had received. (*Claim of Union Oil Company of California*, Claim No. W-13474, Dec. No. W-11834.)

Depreciated cost values of ships.—The second method employed by the Commission involved consideration of the purchase price or cost of construction of a ship, reduced by depreciation to the date of loss and increased by any capital improvements or replacements. This method also is sound on the basis of logic and correct reasoning, as well as from an accounting or legal point of view. Moreover, the Commission determined the values of many items of property other than ships by this procedure, particularly properties claimed by large industrial claimants. However, where both the first and second methods were available, the Commission applied the first method. Generally, the evidence of record did not include data permitting both methods to be considered. Frequently the evidence was insufficient to allow application of either method, which necessitated the use of a third method.

The cost of construction of a ship in 1940 was the basis for an award in one claim, in which claimant's contention that the value should be predicated upon costs of construction of similar ships in the United States was rejected. (*Claim of Texaco, Inc.*, Claim No. W-8613, Dec. No. W-21362.) A tanker, built in 1943 and torpedoed in 1944, was evaluated by using cost of construction figures. (*Claim of Creole Petroleum Corporation, et al.*, Claim No. W-8323, Dec. No. W-20496.)

In another claim involving two vessels, one ship had been constructed in 1939 and sunk in 1944, and the other was purchased by claimant in 1929 and also destroyed in 1944. Claims for these losses filed pursuant to the treaty of peace with Italy resulted in awards. The Commission determined the values of the ships by employing cost of construction and purchase price of

the ships, respectively, and found that the amounts recovered from Italy fully compensated for these losses. Accordingly, the claim was denied by Proposed Decision, and other elements of the claim were not considered. (*Claim of Paul Louis Rosasco, et al.*, Claim No. W-8849, Dec. No. W-21542.) On appeal, the claim was denied by Final Decision on other grounds. (See annotations to *Claim of John Gintoff*, appearing at page 612.)

Comparable values of ships.—The third method of evaluating ships involved consideration of the established values of ships deemed comparable to those in question. The Commission relied upon records of the War Shipping Administration which was authorized to write war-risk insurance on American ships during World War II. Pursuant to statutory authority, this agency had paid out in excess of \$325,000,000 on account of ship losses during the war. (House Doc. No. 67, 83rd Cong., 1st Sess. 19 (1953).) The values of ships determined by the War Shipping Administration were based upon such factors as age, deadweight tonnage, speed, special equipment, cubic capacity, etc. By applying the values established by the War Shipping Administration for ships the Commission found comparable to those that were the subjects of claims, appropriate values were found.

Obviously, the Commission had neither the expertise nor the means of making determinations on the basis of the factors employed by the War Shipping Administration. The Commission therefore ascertained from an examination of the record which ship already evaluated by the War Shipping Administration was comparable to the one under consideration by the Commission and used that value. As indicated above, the first method of ship evaluation was considered the soundest. Of all three methods, the third was deemed the least accurate and least scientific. It was applied only when the other two methods were not possible by reason of lack of evidence. Had the Commission not made use of the third method, some meritorious claims might have been denied for failure to establish the extent of loss.

In a claim involving the loss of two ships and cargo, no suits had been filed with respect to these losses, and neither purchase prices nor construction costs were available. The Commission applied the concept of comparable values and granted an award. (*Claim of Humble Oil & Refining Company*, Claim No. W-12138, Dec. No. W-19410.)

In another case, an award was entered for the loss of six ships on the basis of comparable values found with respect to each of the ships. Upon appeal, the Commission found that two of the six vessels were sister ships, and an adjustment was made accordingly. (*Claim of United Fruit Company*, Claim No. W-1987, Dec. No. W-21522, Final Decision entered May 17, 1967.)

Six ships were the subject of a claim on which compensation had been made by the War Shipping Administration pursuant to war-risk insurance policies it was authorized to issue. The Commission found that the aggregate value of the six ships on the dates of loss was the total amount paid by the War Shipping Administration, and the claim was denied. At an oral hearing before the Commission, claimant urged that the values found by the War Shipping Administration and applied by the Com-

mission should be increased to reflect a \$150 per deadweight ton valuation. After careful review, the Commission found that with respect to four of the ships, claimant had received compensation in excess of the costs of acquisition, while in the cases of the other two ships, the amounts received by claimant were less than their purchase prices, but the ships were well over 20 years of age on the dates of loss. Applying the second method of evaluation, it was clear that the depreciated value of these two ships was substantially less than the amounts claimant received from the War Shipping Administration. The denial of the claim was affirmed. (*Claim of Luckenbach Steamship Co., Inc.*, Claim No. W-20154, Dec. No. W-18803.)

A similar issue was presented in the instant *American-Hawaiian Steamship Company* claim. Claimant had lost four ships for which it had filed four suits in the District Courts of the United States, seeking to recover greater amounts than the War Shipping Administration had paid pursuant to war-risk insurance policies. One of the suits was terminated by a judgment in which the court determined the value of the ship on the date of loss. The other three suits were terminated by stipulations with the United States as to the values of the three ships. Upon objecting to the Proposed Decision of the Commission denying the claim because claimant had been fully compensated, claimant contended that the values should be calculated at \$100 per deadweight ton. Just as in the *Claim of Luckenbach Steamship Co., Inc.*, the Commission rejected the contention that ships should be valued at a fixed amount per deadweight ton, and found by using the second method of depreciated cost values that claimant had been more than fully compensated. Accordingly, the denial of the claim was affirmed.

Subrogee claims of insurance companies.—Section 202(b), for loss of ships or ship cargoes, expressly barred an award “in favor of any insurer or reinsurer as assignee or otherwise as successor in interest to the right of the insured.” Thus while Section 203 of Title II authorized assignments for value of claims under Section 202(a) or (b), an insurance company could not claim as subrogee under Section 202(b). The absence of such exclusionary language in Section 202(a) was construed as an indication of legislative intent to allow subrogees to claim under that section. A portion of the claim of an insurance company was for \$120 which it had paid in full settlement of the loss by a United States national policyholder of personal property in the Philippines, receiving an assignment of the claim for said loss. An award was made to the insurance company for this portion of the claim under Section 202(a). (*Claim of Westchester Fire Insurance Company*, Claim No. W-8611, Dec. No. W-20960.)

On the other hand, Section 202(c) specifically provided for certain claims of insurance companies for “net losses under war-risk insurance or reinsurance policies or contracts, incurred in the settlement of claims for insured losses of ships” However, insurance companies were not entitled to receive awards in the amounts which they had paid in settlement of claims for losses of insured ships of United States nationals. Section 202(c) provided for payment of “net losses,” to be determined by “de-

ducting from the aggregate of all payments made in the settlement of such insured losses the aggregate of the net amounts received by any such insurance companies on all policies or contracts of war-risk insurance or reinsurance on ships under which the insured was a national of the United States, after deducting expenses." Thus, where an insurance company claimant had settled claims in the total amount of \$417,439.07 for insured losses of ships of United States nationals under war-risk insurance policies, and had received premium payments of \$288,119.93 and incurred expenses of \$20,349.11 in connection with its war-risk insurance business, its net loss was determined to be \$149,668.25. After deduction of Federal tax benefits received by claimant in the amount of \$11,822.84, an award of \$137,845.41 was made. (*Claim of Reinsurance Corporation of New York*, Claim No. W-8600, Dec. No. W-20106.)

Assignment of claims under Section 202(c) for net losses under war-risk insurance or reinsurance policies was precluded, by implication, by Section 203 of the 1948 Act which provided for assignments of claims under Sections 202(a) and (b) only. A merger of insurance companies was not construed as an assignment of claims and did not preclude the granting of an award to the resulting entity. (*Claim of Boston Old Colony Insurance Company, formerly known as Old Colony Insurance Company, as Successor by Merger to Boston Insurance Company*, Claim No. W-8568, Dec. No. W-20955.)

Passenger claims.—Section 202(d) of the 1948 Act contained unique provisions authorizing certain death, injury and property loss claims by civilian American passengers aboard commercial vessels resulting from German or Japanese military action prior to the entry of the United States into World War II. The statute was divided into three parts: Section 202(d) (1) covering death claims, Section 202(d) (2) covering personal injury claims, and Section 202(d) (3) covering passenger property claims.

A number of questions were presented during the processing of the civilian American passenger claims. A "civilian" was deemed to mean any person who was not a member of the armed forces. Whether the statute meant the armed forces of the United States or any other armed forces was not decided because the issue never arose.

The Commission held that the person who died, was injured, or lost personal property aboard a vessel had to be a "national of the United States" on the date of death, personal injury, or property loss to satisfy one of the statutory prerequisites to favorable action. Thus where claimants were not nationals of the United States when their claims under Section 202(d) arose, their claims were denied. (*Claim of Alexander Elefant, et al.*, Claim Nos. W-3428 and W-3429, Dec. No. W-2943, 22 FCSC Semiann. Rep. 56 (Jan-June 1965).)

Another prerequisite was that the claimant be a "passenger." Upon consideration of this issue, the Commission studied other Federal statutes which clearly distinguished passengers from ship officers and crew members including employees of the vessels. Accordingly, claims filed by ship officers and crew members were denied under Section 202(d). (*Claim of Elmar Saar*, Claim

No. W-2832, Dec. No. W-4165; *Claim of Morris Sperber*, Claim No. W-2709, Dec. No. W-245, 21 FCSC Semiann. Rep. 73 (July-Dec. 1964); *Claim of Lyman Fladger, et al.*, Claim No. W-14562, Dec. No. W-10395.)

Date of loss in passenger claims.—The statute limited valid claims to those that arose “during the period beginning September 1, 1939, and ending December 11, 1941.” September 1, 1939 marks the beginning of World War II in Europe, and December 11, 1941 is the date when the United States entered the war against Germany. While there were ample deterrents to American civilian travel in the period of open hostilities, civilian American passengers on vessels prior to the war, as in the case of Americans killed or injured on the SS *Athenia*, were the unwitting victims of enemy attack, a risk which they did not knowingly assume. Therefore passenger claims that arose outside the statutory dates were denied. (*Claim of Elmar Saar*, Claim No. W-2832, Dec. No. W-4165; *Claim of Harry Julio Sanico, et al.*, Claim No. W-17764, Dec. No. W-3394.)

Death claims.—Section 204 of the 1948 Act, containing the usual requirement of ownership of a claim by United States nationals from the date it arose to the date of filing (see annotations to *Claim of Gerardo Soliven*, appearing at page 572), was specifically applicable to Sections 202(a), (b), and (c) only. Subsections (d) (1), (2), and (3) contain their own requirements of United States nationality at the time of death, injury, or loss of property by a passenger on a vessel. In addition, the opening sentence of Section 202 directs the Commission to receive and determine claims of “nationals of the United States.” Since Section 202(d) (1) provided for claims for “loss or damage on account of . . . the death of any person . . . being then a civilian national of the United States . . .,” a claim thereunder was compensable only if both the claimant and the decedent were United States nationals.

An important question in such a claim was the amount of an award to be made for death of a civilian American passenger. Neither the express language of the statute nor its legislative history provided any hints in this respect. In the course of resolving this issue, the Commission considered that under common law one could not recover damages for death even when the act giving rise to the claim was wrongful. Claims resulting from war, it was noted, are not recognized under international law unless included in treaties of peace or special legislation. The Commission also considered that the statute was remedial in nature and sought to accomplish a humane purpose. For these reasons, the Commission held that the rules governing tort actions should not be applied, and that one life should not be found to be more valuable than another under Section 202(d) (1). A study of other Federal statutes providing for claims based upon death indicated that an award for death in the amount of \$10,000 would be reasonable, and this amount was fixed by the Commission initially. (*Claim of Clara Emma Tinney*, Claim No. W-1276, Dec. No. W-8, 20 FCSC Semiann. Rep. 41 (Jan.-June 1964).) Subsequently, this matter was reconsidered in connection with other claims for death and the Commission raised all such awards

to \$25,000 for the death of each civilian American passenger under Section 202(d)(1). The Commission recognized that "no monetary sum could ever adequately compensate for the loss of a human life." (*Claim of Edward T. Wilkes, et al.*, Claim Nos. W-10922, W-10923, and W-10924, Dec. No. W-3576, 23 FCSC Semiann. Rep. 77 (July-Dec. 1965).)

Eligible survivors.—Section 202(d)(1) was unusual because it specified those survivors who could recover and provided priorities among such survivors. A surviving widow or widower would be the only awardee if there were no issue. Surviving children (in equal shares) and surviving widow or widower would each receive one-half shares. Surviving children would share equally if there were no surviving widow or widower, and surviving parents would be the only awardees if there were no surviving widow, widower or children.

The Commission held that an eligible survivor had to be living at the time he received the check representing the proceeds of his award, and that if he died before negotiating the check his share would not become a part of his estate. In the event of death of an eligible survivor, his share would not abate, but would inure to the benefit of the person or persons next in line of priority. Thus, where a deceased civilian American passenger left parents but no spouse or children, and one of his parents died before an award was paid, the other parent would be entitled to the full amount of the award. (*Claim of Clara Emma Tinney, supra.*)

Similarly, where only children were left surviving, they received the award in equal shares (*Claim of Ellen Tolley Duskin, et al.*, Claim No. W-18146, Dec. No. W-4225); and where the deceased was survived by his widow and two children, his widow received a one-half share of the award and the children the other one-half share equally (*Claim of Mary Cobb Laughinghouse, et al.*, Claim No. W-20668, Dec. No. W-2967).

Brothers, sisters and other relatives not mentioned in Section 202(d)(1) of the 1948 Act were barred from receiving awards. (*Claim of Hazel Kathryn Koltes*, Claim No. W-3028, Dec. No. W-120, 21 FCSC Semiann. Rep. 64 (July-Dec. 1964).)

In one case, the deceased civilian American passenger was survived only by her husband and children. However, her husband and children, except for one son, died before they could file a claim. Her sole surviving son filed a claim but died shortly thereafter. Unfortunately since there was no surviving person to whom an award could be granted, the Commission had no alternative but to deny the claim. (*Claim of the Estate of Patrick H. Harrington, Deceased*, Claim No. W-9756, Dec. No. W-7138.)

Pursuant to Section 213(a)(1) of the 1948 Act, awards under Section 202(d)(1) were given first priority for payment in full by the Secretary of the Treasury.

Personal injury claims.—Section 202(d)(2) of the 1948 Act provided for certain claims of civilian American passengers who sustained "injury or permanent disability" as a result of military action by Germany or Japan during the same statutory period as under Section 202(d)(1), relating to death claims; namely, September 1, 1939 to December 11, 1941.

The lack of any statutory guides presented problems that required extensive study. The Commission had already held in the *Tinney* decision, *supra*, that the rules which govern tort actions in courts of law were inapplicable to claims under the statute. Thus, such factors as life expectancy, prospective earnings, pain and suffering, and medical and other out-of-pocket expenses could not be the bases for determining an award either under Section 202(d)(1) or 202(d)(2). Moreover, it was clear that the Congress did not intend to compensate every injury, for if it did, the words "or permanent disability" need not have been included. Additionally, it was concluded that it was the legislative intent that an award for a "permanent disability" should be greater than one for an "injury."

Upon careful consideration of this matter, the Commission concluded that the term "injury or permanent disability" meant a disabling injury or a permanent disability, and did not cover superficial injuries.

The amount that should be granted for an injury or permanent disability presented a difficult question. After considerable study, the Commission concluded that an appropriate schedule should be prepared to cover claims in which there were total or partial losses of members of the body. Few, if any, such claims were ever filed. However, with respect to other claims to which such schedule was inapplicable, the Commission used a device that would neither require it to employ medical experts nor involve a great expense of time in adjudicating such claims. It held that awards should be measured by the period of disability rather than the nature of the disability. Thus, a more serious disability would be found to have persisted for a longer period of time than a less serious type. The amount of an award was fixed at \$200 for each month or portion of a month during which the injury was total in nature, and the maximum amount to be granted for an "injury or permanent disability" was fixed at \$10,000. (*Claim of Robert Newton Pritchard*, Claim No. W-009, Dec. No. W-2271, 22 FCSC Semiann. Rep. 46 (Jan.-June 1965).)

Questions arose with respect to claims of civilian American passengers for shock and mental conditions assertedly resulting from enemy military action. The Commission again applied liberal rules of construction and allowed such claims if a causal relationship was established between the military action and the injuries. Thus, an award of \$10,000 was granted upon the basis of medical reports and other evidence that claimant had "suffered an acute and severe undifferentiated type of schizophrenic reaction which was directly precipitated from her experiences while a passenger aboard the SS *Athenia* when that vessel was sunk." (*Claim of Jane Hannah Evans, et al.*, Claim Nos. W-5895 and W-8448, Dec. No. W-21484.)

In another claim, the aggravation of pre-existing conditions as a result of enemy military action was found to be a sufficient basis for an award. (*Claim of Hazel Toon*, Claim No. W-17790, Dec. No. W-19105, Final Decision entered on May 17, 1967.) Similarly, the Commission found that claimant's condition of "infectious arthritis" was causally connected to the enemy mili-

tary action, and an award was granted. (*Claim of Max Fischbach*, Claim No. W-6772, Dec. No. W-16574.)

A claim based upon arrest, internment, forced labor, inhumane treatment and personal injuries resulting from internment was denied because claimant was not a civilian American passenger at the time his claim for personal injuries arose, and because his other claims were not covered by Section 202 of the 1948 Act. (*Claim of Joseph J. Pietruszka*, Claim No. W-2230, Dec. No. W-119, 21 FCSC Semiann. Rep. 64 (July-Dec. 1964).) Personal injury claims arising outside the statutory date were denied. (*Claim of Joseph Jarosz*, Claim No. W-912, Dec. No. W-079, 20 FCSC Semiann. Rep. 43 (Jan.-June 1964); *Claim of Alfred A. Smith*, Claim No. W-13246, Dec. No. W-3850.)

Section 202(d) (2) provided that an award for personal injury or permanent disability "shall be payable solely to the person so injured or disabled." Accordingly, where the injured person died before filing under the statute, the claim of his widow was denied. (*Claim of Flora Sanidas*, Claim No. W-3945, Dec. No. W-9577.) However, an injured civilian American passenger who was incompetent at the time her claim was determined was granted an award, payable to her guardian. (*Claim of Stanley M. Brown, Esq., Guardian over Elizabeth S. Martin, a Mentally Incompetent Person*, Claim No. W-3732, Dec. No. W-15316.)

As in the case of death claims under Section 202(d) (1), awards under Section 202(d) (2) were given priority for payment in full, pursuant to Section 213(a) (1).

Passenger property claims.—Section 202(d) (3) provided for certain personal property losses of civilian American passengers aboard vessels resulting from military action by Germany or Japan during the same statutory period as under Sections 202 (d) (1) and 202(d) (2), namely, September 1, 1939 to December 11, 1941.

The term "property" was defined in Section 201(d) of the Act to mean "real property and such items of tangible personalty as can be identified and evaluated." A discussion with respect to the meaning of the term "property" as applied to other sections of the 1948 Act is contained in the annotations to *Claim of John Gintoff*, appearing at page 601.

Insofar as passenger claims are concerned, the term "property" was further restricted by Section 202(d) (3) to such as was "determined by the Commission to be reasonable, useful, necessary, or proper under the circumstances." For the most part these claims included luggage, personal belongings and the like, generally retained in a passenger's cabin aboard a vessel. Passenger property should be distinguished from "ship cargoes" within the meaning of Section 202(b). Although the same type of personal property may have been involved, personalty was ship cargo if transported pursuant to a contract of carriage for which a bill of lading is usually issued whereas it would be passenger property if transported in the passenger's cabin.

Date of passenger property loss.—Whether personalty was held to be passenger property or ship cargo was significant because of the statutory dates during which such claims must have arisen in order to be covered by the 1948 Act. If the property

was ship cargo, the claim could arise during the period from September 1, 1939 to September 2, 1945. However, passenger property claims were confined to those arising between September 1, 1939 and December 11, 1941. A claim involving this question was denied because it was not established that the property was ship cargo, and because the loss occurred outside the statutory date for passenger property claims. (*Claim of Lyman Fladger, et al.*, Claim No. W-14562, Dec. No. W-10395.)

Another claim involved the loss of passenger property aboard a vessel docked in Sumatra. Since the loss resulted from Japanese military action on January 27, 1942, which was outside the statutory period for passenger property claims, it appeared to be an invalid claim. However, the Commission placed a liberal interpretation on the language of the statute and held that property aboard a ship docked in a particular area might be deemed property located in that area. Inasmuch as the property was in an area covered by Section 202(a) of the 1948 Act, as a territory occupied or attacked by Japanese military forces, the Commission granted an award under that section. The date of the enemy action precluded an award under Section 202(d) (3). (*Claim of Irwin Stuart Harris*, Claim No. W-427, Dec. No. W-8780.)

Evidence to support passenger claims.—The Commission recognized that as a general rule it would be a rare exception if a claimant had in his possession primary documentary evidence to establish ownership and value of the items of personalty lost aboard a vessel. Accordingly, the Commission granted awards in such cases on the basis of credible secondary evidence. Thus, claimant's affidavit submitted to the Department of State in 1946 in which he outlined his losses of personalty aboard the SS *Athenia* was accepted as the basis for an award under Section 202(d) (3) of the 1948 Act. (*Claim of Wilson L. Smith, Jr.*, Claim No. W-1332, Dec. No. W-9, 20 FCSC Semiann. Rep. 40 (Jan.-June 1964).) Hospital records, a contemporaneous newspaper article and a corroborating affidavit were deemed sufficient to support an award under Section 202(d) (2) for injury and disability. (*Claim of Rebecca A. Park, et al.*, Claim No. W-6217, Dec. No. W-3589.)

In case of death of a person suffering a property loss under Section 202(d) (3), the award could be made only to a widow, husband, children, or parents, in the same manner as awards based upon a civilian passenger's death under Section 202(d) (1). Also, as noted above in connection with war-risk insurance claims under Section 202(c), assignments of claims under Section 202(d) (3) were precluded by Section 203 which provided for assignments of claims under Sections 202(a) and (b) only. Accordingly, a portion of a claim of an insurance company based upon settlement of its liability for loss of personal property by an insured passenger aboard the SS *Athenia* was denied. The claimant was not among the classes of persons eligible to receive an award in case of death of the person who suffered the loss, and the Act made no provision for assignment of this type of claim. (*Claim of Fireman's Fund Insurance Company, formerly known as Home Fire and Marine Insurance Company of Cali-*

fornia, as Successor to Fireman's Fund Insurance Company, Claim No. W-8574, Dec. No. W-20958.)

The Commission was advised that Great Britain had provided for certain *ex gratia* payments to passengers who had sustained personal property losses aboard the SS *Athenia*, an English vessel. Pursuant to Section 206(a) of the 1948 Act appropriate deductions were made by the Commission from awards granted to persons who had received such payments. (*Claim of Rebecca A. Park, et al., supra.*)

In the Matter of the Claim of

Claim No. W-1398
Decision No. W-178

THOMAS E. MALLORY

Under Title II of the War Claims Act
of 1948, as amended by Public Law
87-846

In claim filed under Section 202(a), Title II of the 1948 Act, the amount of the award for loss in the Philippines reduced by 25% of excess over \$500 in accordance with limitations applied under the Philippine Rehabilitation Act of 1946.

PROPOSED DECISION

This claim, for \$1,500.00, under Section 202(a), Title II of the War Claims Act of 1948, as amended, is based upon the asserted destruction of certain improved property located in Limay, Philippine Islands. Claimant, THOMAS E. MALLORY, has been a national of the United States since his birth in Upson County, Georgia on January 1, 1874.

Section 202(a) of the Act, in part, authorizes the Commission to determine the validity and amount of claims of nationals of the United States for:

(a) loss or destruction of, or physical damage to, property located in Albania, Austria, Czechoslovakia, the Free Territory of Danzig, Estonia, Germany, Greece, Latvia, Lithuania, Poland, or Yugoslavia, or in territory which was part of Hungary or Rumania on December 1, 1937, but which was not included in such countries on September 15, 1947, which loss, destruction, or physical damage occurred during the period beginning September 1, 1939, and ending May 8, 1945, or which occurred in the period beginning July 1, 1937, and ending September 2, 1945, to property in territory occupied or attacked by the Imperial Japanese military

forces (including territory to which Japan has renounced all right, title, and claim under article 2 of the Treaty of Peace Between the Allied Powers and Japan) except the island of Guam . . . *Provided further*, That such loss, destruction, or damage must have occurred, as a direct consequence of (1) military operations of war or (2) special measures directed against property in such countries or territories during the respective periods specified, because of the enemy or alleged enemy character of the owner, which property was owned, directly or indirectly, by a national of the United States at the time of such loss, damage or destruction. (76 Stat. 1107 (1962) ; 50 U.S.C. App. 2017a (1964).)

The Commission finds on the basis of all the evidence of record that claimant owned a small dwelling house in the Barrio of Limay, Philippine Islands, which was destroyed on or about February 20, 1942 as a direct consequence of military operations of war and for which loss he received no compensation under the Philippine Rehabilitation Act of 1946.

On the basis of all the evidence of record, the Commission finds that claimant's house had a value of \$1,500.00 and concludes that he is entitled to an award pursuant to the provisions of Sections 202(a) and 213(f) of the Act.

Section 213(f) of the Act provides that payments "on account of any award for loss, damage, or destruction occurring in the Commonwealth of the Philippines shall not exceed the amount paid on account of awards in the same amount under the Philippine Rehabilitation Act of 1946." (76 Stat. 1112 (1962) ; 50 U.S.C. App. 2017 1 (f) (1962).) In this connection, Section 102(a) of the Philippine Rehabilitation Act provides, *inter alia*, that in case the aggregate amount of the claims which would be payable to any one claimant exceeds \$500.00, the aggregate amount of the claims approved in favor of such claimant shall be reduced by 25 per centum of the excess over \$500.00. In view of the foregoing, it is concluded that the maximum amount that may be paid on this claim is \$1,250.00.

The Commission has decided that an award under Title II of the Act shall not be increased by interest. (See the *Claim of Bruno Adamski*, Claim No. W-1184, Dec. No. W-1, 20 FCSC Semiann. Rep. 37 (Jan.-June 1964).) Accordingly, no interest will be allowed in this claim.

AWARD

An award is hereby made to THOMAS E. MALLORY in the amount of One Thousand Five Hundred Dollars (\$1,500.00). Pursuant to Section 213(f) of the War Claims Act of 1948, as

amended, payment on account of this award may not exceed One Thousand Two Hundred Fifty Dollars (\$1,250.00).

Dated at Washington, D.C.

August 19, 1964.

Philippine claims.—Section 202(a) of the War Claims Act of 1948, as amended, in directing the Commission to receive and determine claims of United States nationals for loss or destruction of or physical damage to "property in territory occupied or attacked by the Imperial Japanese military forces," clearly included claims for property losses in the Philippines. However, awards had been made for many such losses by the Philippine War Damage Commission under the Philippine Rehabilitation Act of 1946 (60 Stat. 128). For this reason, Section 202(a) contained a special proviso that "claims for loss, destruction, or damage occurring in the Commonwealth of the Philippines shall not be allowed except on behalf of nationals of the United States who have received no payment, and certify under oath or affirmation that they have received no payment, on account of the same loss, destruction, or damage under the Philippine Rehabilitation Act of 1946, whether or not claim was filed thereunder." Accordingly, all claimants having otherwise valid claims for property losses in the Philippines were required to file such a certification, and all decisions making awards to such claimants contained a finding that claimant had received no compensation for the same loss under the Philippine Rehabilitation Act of 1946, as in the *Mallory* decision.

Limitation on payment of awards for losses in the Philippines.—Awards granted by the Philippine War Damage Commission in amounts of \$500.00 or less were paid in full. Payments on higher awards were limited by the statute to an initial \$500.00 plus 75% of the amount of the award exceeding \$500.00. In practice, available funds were sufficient to pay only 52.5% of the amounts of awards exceeding \$500.00. The role of the Foreign Claims Settlement Commission under subsequent legislation, in making awards for an additional 22.5%, not to exceed \$25,000.00, is discussed on page 667. Against this background, Title II of the 1948 Act contained a further provision in Section 213(f) that "Payments made under this section on account of any award for loss, damage, or destruction occurring in the Commonwealth of the Philippines shall not exceed the amount paid on account of awards in the same amount under the Philippine Rehabilitation Act of 1946." The application of this provision also is illustrated in the *Mallory* claim. Since the value of claimant's property at the time of loss was \$1,500.00, his award was stated in that amount; but since the maximum that he could have been paid under the formula of the Philippine Rehabilitation Act of 1946 was \$1,250.00 (\$500.00 plus 75% of \$1,000.00), the award paragraph

stated further that pursuant to Section 213(f), payment on account of the award may not exceed \$1,250.00.

This limitation upon payment applied only to awards or portions of awards representing compensation for property lost in the Philippines. Where claimant was the sole proprietor of a business enterprise which suffered property losses as a result of military operations of war in China, Hong Kong, and the Philippines, in the amounts of \$251,622.43, \$66,416.84, and \$18,330.80, respectively, an award was made for such losses in the total amount of \$336,370.07, the award paragraph stating that this amount included \$18,330.80 for losses in the Philippines, as to which payment could not exceed \$13,873.10. (*Claim of Fred Maloof*, Claim No. W-8485, Dec. No. W-13916.) The limitation applied to corporate claimants as well as to individual claimants (*Claim of Fagan and Company, Federal Inc., U.S.A.*, Claim No. W-5957, Dec. No. W-17638), and to claimants who were assignees of those to whom the claims originally accrued (*Claim of Aetna Insurance Company*, Claim No. W-8557, Dec. No. W-20306; *Claim of Insurance Company of North America*, Claim No. W-8585, Dec. No. W-20956.)

The predecessor of one corporate claimant had filed a claim with the Philippine War Damage Commission under the Philippine Rehabilitation Act of 1946 in two parts: (1) for loss of property destroyed by United States military authorities to prevent its capture by the Japanese; and (2) for other property losses in the Philippines during World War II. It also instituted an action in the United States Court of Claims for the losses of the first type. The Philippine War Damage Commission determined that the losses of the first type amounted to \$1,262,962.00, but suspended payment thereon pending the outcome of the action in the Court of Claims; and determined that the losses of the second type amounted to \$1,086,275.18. In 1950, payment of \$570,531.99 was made on account of such losses (\$500.00 plus 52.5% of the remaining amount); and in 1964 an additional \$25,000.00 was paid pursuant to an award by the Foreign Claims Settlement Commission on a claim for an additional 22.5% under Public Law 87-616, under which payments were limited to \$25,000.00. As to the other losses, the Court of Claims decided in claimant's favor in a judgment entered on November 6, 1951 (*Caltex (Philippines), Inc. v. United States*, 100 F. Supp. 970 (1951)). On petition of certiorari by the Government of the United States, the United States Supreme Court dismissed the action on the ground that the wartime destruction of private property by United States military authorities to prevent its capture and use by the enemy did not constitute a taking of property within the purview of the Fifth Amendment of the United States Constitution (*United States v. Caltex*, 344 U.S. 194 (1954)). The Philippine War Damage Commission then having completed its work and terminated its function as an agency of the United States Government, its award for these losses was never paid. The Foreign Claims Settlement Commission found the losses, in the amount of \$1,262,962.00, to be compensable under Title II of the 1948 Act. In the application of Section 213(f), the Commission found that claimant had already received its initial \$500.00 payment as a part of the award from the Philippine War Damage

Commission, and had received the maximum of \$25,000.00 from the Foreign Claims Settlement Commission in its claim for unpaid amounts over the 52.5% which had been available under the Philippine Rehabilitation Act of 1946, so that the maximum now payable to claimant for the \$1,262,962.00 loss was 52.5% thereof, or \$663,055.00. A further deduction by reason of Federal tax benefits previously received, reduced the award to \$621,105.00. (*Claim of Esso Standard Eastern, Inc.*, Claim No. W-17531, Dec. No. W-21444.)

Another claimant who had received an award of \$1,689.04 from the Philippine War Damage Commission for loss of personal property in the Philippines, had been paid \$1,124.25 (\$500.00 plus 52.5% of the amount of the award exceeding \$500.00). He failed to file a claim with the Foreign Claims Settlement Commission under Public Law 87-616 for a supplemental payment on the award. The deadline for filing such claims was December 23, 1963, and the Commission completed its affairs in connection with that program on December 23, 1964 as required by law. On July 13, 1964, claimant filed a claim under Title II of the 1948 Act. This was filed too late to be considered as a claim under Public Law 87-616 for an additional 22.5% payment, and was denied as a claim under Title II because claims thereunder are barred by Section 202(a) if payment has been made on account of the same loss under the Philippine Rehabilitation Act of 1946. (*Claim of Alexander George Henderson*, Claim No. W-8360, Dec. No. W-8483.)

Where a corporation had filed a claim with the Philippine War Damage Commission based upon its losses in the Philippines, had received an award, had been paid the initial \$500.00 plus 52.5% of the excess under the Philippine Rehabilitation Act of 1946, and had received an additional \$25,000.00 from the Foreign Claims Settlement Commission on account of the same award under Public Law 87-616, a subsequent claim by a stockholder of the corporation, filed under Title II of the 1948 Act for his proportionate interest in that part of the award not theretofore paid, was denied, the Commission holding that an award to a corporation fully settles and discharges the respective claims of its stockholders for the same loss. (*Claim of Stetson G. Hindes*, Claim Nos. 10228 and W-18219, Dec. No. W-12196.)

In the Matter of the Claim of

Claim No. W-18886

Decision No. W-21524

**THESSALONICA AGRICULTURAL AND
INDUSTRIAL INSTITUTE**

Under Title II of the War Claims Act of 1948,
as amended by Public Law 87-846

Amount of damage to real and personal property of agricultural and industrial institute determined on basis of balance sheet, photographs, estimates of witnesses, interviews with school offi-

cials, production records, and reputation of production facilities and agricultural leadership.

PROPOSED DECISION

This claim, for \$162,000.00, under Section 202(a) of Title II of the War Claims Act of 1948, as amended, is based upon the loss, damage and destruction during World War II of certain improved real property and personal property located in Thessalonica, Greece.

The Commission's records disclose that the THESSALONICA AGRICULTURAL AND INDUSTRIAL INSTITUTE (also known as the American Farm School) a membership corporation, organized in 1904 under the laws of the State of New York, qualifies as a national of the United States within the meaning of Section 201(c) (3) of the War Claims Act of 1948, as amended.

Section 202 of the Act directs the Commission to determine the validity and amount of claims of nationals of the United States for:

(a) loss or destruction of, or physical damage to, property located in . . . Greece . . . which loss, destruction, or physical damage occurred during the period beginning September 1, 1939, and ending May 8, 1945. . . *Provided further*, That such loss, destruction, or damage must have occurred, as a direct consequence of (1) military operations of war or (2) special measures directed against property in such countries or territories during the respective periods specified, because of the enemy or alleged enemy character of the owner, which property was owned, directly or indirectly, by a national of the United States at the time of such loss, damage, or destruction. . . . (76 Stat. 1107 (1962); 50 U.S.C. App. 2017a (1964).)

The evidence of record in this claim includes a complete description by witnesses of the school; detailed inventory-estimates of the improved real and personal property lost, a pre-war balance sheet; diagram of the Farm School area; photographs, estimates of damage by witnesses to both the improved real property and personal property of the school, and reports of information of record gathered from statements made in the interview with the Vice-President of the present Farm School.

Based upon all the evidence of record, the Commission finds that claimant corporation, the THESSALONICA AGRICULTURAL AND INDUSTRIAL INSTITUTE owned improved real property and personal property consisting of a large complex of farm buildings, cottages, and dormitories, devoted to agricultural research and training, located in Thessalonica, Greece; and that the entire school facility suffered damage and destruction as

hereinafter described during World War II, as a result of German military operations of war. The Commission further finds that at the time of the damage and destruction, the school consisted of a total of 220 acres with approximately 30 structures erected on the land. The campus facilities housed 150 students and consisted of a classroom building, a dormitory, livestock and agricultural departments and housing facilities for students and staff. The school was occupied by the German forces from April 11, 1941 to October 1941, and all of the school facilities were used as the general headquarters for the German Air Force as a communication center. The capital assets of the school reflected in 1939 balance sheet of record show a value of \$268,296.41. The balance sheet value of the buildings of the school reflect a value of \$114,080.44 as reported in a contemporaneous statement issued by claimant corporation.

In determining the value of the damage and destruction to the improved real property and personal property, the Commission considered the estimates of the damage by witnesses, the above-mentioned pre-war balance sheet, photographs showing the destruction of James Hall, and estimates of the value of the personal property assets of the school, consisting of equipment, fixtures, livestock, a dairy herd, and poultry. The Commission also considered estimates made by the school officials, concerning the average yearly production of basic field crops lost, and the reputation of the school's production facilities and agricultural leadership in Greece.

Upon consideration of the entire record, the Commission finds that the improvements and personal property lost, damaged or destroyed had the following values:

| <i>Item</i> | <i>Type of loss</i> | <i>Value</i> |
|--|---------------------|--------------|
| (a) Real property: | | |
| Main building (James Hall) ----- | Destroyed ----- | \$60,000 |
| Greenhouse ----- | do ----- | 3,000 |
| Subtotal ----- | | 63,000 |
| (b) Fixtures and equipment: | | |
| Dormitory equipment (Princeton Hall) ----- | Damaged ----- | 5,000 |
| Fixtures (13 cottages) ----- | do ----- | 17,000 |
| School, library, museum (equipment) ----- | do ----- | 10,000 |
| Subtotal ----- | | 32,000 |

| <i>Item</i> | <i>Type of loss</i> | <i>Value</i> |
|--------------------------------|---------------------|--------------|
| (c) Livestock: | | |
| Entire dairy herd ----- | Destroyed ----- | 20,000 |
| Horses and breeding bull ----- | do ----- | 2,000 |
| Poultry, pigs, sheep ----- | do ----- | 5,000 |
| Subtotal ----- | | 27,000 |
| Total ----- | | \$122,000 |

Upon consideration of the entire record, the Commission finds that the improved real property and personal property had a total value of \$122,000.00; and concludes that claimant, THESALONICA AGRICULUTURAL AND INDUSTRIAL INSTITUTE, is entitled to an award in that amount pursuant to Section 202(a) of the Act.

The Commission has decided that an award under Title II of the Act shall not be increased by interest. (See the *Claim of Bruno Adamski*, Claim No. W-1184, Dec. No. W-1, 20 FCSC Semiann. Rep. 37 (Jan.-June 1964).) Accordingly, no interest will be allowed in this claim.

A portion of this claim is based upon the loss of certain income producing crops and dairy products owned by the American Farm School and allegedly lost to claimants during the period of German occupation of the school.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. § 580.8 (Supp. 1966).)

The Commission finds that claimants have not sustained the burden of proof with regard to the nature of the confiscation involved, the circumstances of the alleged seizure and loss, and the quantity and value of such confiscated average yearly crop and dairy production.

Moreover, with reference to the alleged loss of income from the above-mentioned income producing crops and dairy products, the question presented is whether the loss of income constitutes loss or destruction of, or physical damage to, "property" within the meaning of Section 202(a) of the Act.

Section 201 of the Act, which appears under the caption "Definitions," provides as follows:

As used in this title the term or terms—

* * *

(d) "Property" means real property and such items of tangible personalty as can be identified and evaluated. (76 Stat. 1107 (1962) ; 50 U.S.C. App. 2017 (1964).)

Moreover, the Commission has considered the legislative history of the Act and holds that losses of intangible personalty, such as income from properties or rent, were not intended by Congress to be compensable under Title II of the Act. (See the *Claim of John Gintoff*, Claim No. W-12968, Dec. No. W-9672.)

The Commission therefore finds that the loss of income upon which a portion of this claim is based does not constitute "property" within the purview of Section 201(d) of the Act. Since Section 202(a) of the Act provides only for certain claims for the loss of "property" as defined by Section 201(d), it is concluded that this portion of the claim is not compensable under Title II of the Act.

Accordingly, for the above-mentioned reasons, this portion of the claim is denied.

AWARD

An award is hereby made to the THESSALONICA AGRICULTURAL AND INDUSTRIAL INSTITUTE in the amount of One Hundred Twenty-Two Thousand Dollars (\$122,000.00).

Dated at Washington, D.C.

April 5, 1967.

Valuation of property.—The instant claim illustrates a number of the factors considered by the Commission in determining the amount of loss suffered by a claimant through war damage. The measure of compensation under Title II of the 1948 Act was determined on the basis of the value of property on the date of its destruction or, in a case of partial destruction, on the difference between the value of the property immediately following the loss and the value just prior thereto.

The Commission consistently held that actual postwar replacement or reconstruction costs were not a proper measure of compensation. Where a claimant asked for compensation in the amount of \$1,583,214.64, which was the actual cost of replacing its lost or destroyed property after the war, its award was based upon a determination that the total amount of loss was \$869,924.57, measured as of the time the loss occurred. (*Claim of California Texas Oil Corporation*, Claim No. W-8616, Dec. No. W-10424, 24 FCSC Semiann. Rep. 18 (Jan.-June 1966).)

Values expressed in foreign currencies were converted into United States dollars. Some controversy arose with respect to the exchange rate applicable to valuations made in German reichsmarks. The Commission held consistently that the wartime valuation of war damage expressed in German reichsmarks should be converted into United States dollars at the exchange rate of 4 RM = \$1.00. Some claimants objected contending that the official rate of exchange of 2.5 RM = \$1.00 should be applied to prewar and postwar valuations in reichsmarks. The Commission rejected this contention and held that the 4:1 rate reflects the actual and true rate of exchange during World War II based upon the relative purchasing power of the reichsmark and the dollar. (*Claim of Martha D. Olfay*, Claim No. W-251, Dec. No. W-15266, 25 FCSC Semiann. Rep. 38 (July-Dec. 1966).)

A similar controversy arose with respect to the exchange rate of the Czechoslovakian *koruna*. The *koruna* was legal tender in Bohemia-Moravia during the German occupation and was pegged to the German reichsmark in the relation of one reichsmark to ten *koruny*. Since the Commission had established that during the war one reichsmark had the value of \$0.25, it concluded that during the German occupation of Bohemia-Moravia the *koruna* had the value of \$0.025. (*Claim of Walter Forman*, Claim No. W-1422, Dec. No. W-8730.)

Chinese silver dollars were valued by the Commission at \$0.271919 as of 1941, and dollars of the Federal Reserve Bank (China) at \$0.236250 as of May 1942. (*Claim of Chinese Engineering & Development Co., Inc.*, Claim No. W-756, Dec. No. W-1999.) The gulden of the Netherlands was valued by the Commission at \$0.53 per gulden (guilder) prior to World War II. (*Claim of Esso Standard Eastern, Inc.*, Claim No. W-17532, Dec. No. W-21445.) The Commission also established that during World War II, 4.267 Japanese yen were the equivalent of one United States dollar. (*Claim of International Telephone and Telegraph Corporation*, Claim No. 22740, Dec. No. W-19903.)

In evaluating improved real property, the Commission used as a point of initial reference, whenever available, the prewar tax assessed value in order to arrive at a fair market value at the time of the loss. Pursuant to a study conducted by the Commission, specified percentage increases were added to the assessed value, depending upon the location of the property and the nature of its improvements. (*Claim of Joseph Rosenkranz*, Claim No. W-1302, Dec. No. W-12884, 25 FCSC Semiann. Rep. 33 (July-Dec. 1966).)

Where the Commission was able to obtain information concerning the purchase price paid for the property destroyed and pictures of the property in its postwar condition, such evidence was also taken into consideration in determining the amount of the loss. (*Claim of Bartolomej Svrcek, et al.*, Claim No. W-4158, Dec. No. W-2390.)

Where losses were based on the destruction of property in the Federal Republic of Germany, Poland, Austria, Yugoslavia or Greece, an on-the-spot investigation by Commission representatives frequently was possible, and aided greatly in determining the amount of the damage. (*Claim of Leonard A. Jacobson*, Claim

No. W-8139, Dec. No. W-16731.) Where such investigation was not conducted, the Commission considered statements from local authorities, values stated for fire insurance purposes, information available to the Commission as to the value of similar properties in the same city, town, or area, and any other available information concerning the value of the property in its condition prior to and after the damage.

The value of property in Greece was the subject of a special study. Based on this study, average prices for land, building lots, houses, and many items of personal property in various areas of Greece were established by the Commission, and in the absence of evidence to the contrary, such values were applied to the property upon which the claims were based. (*Claim of Angelos P. Nicholas*, Claim No. W-3372, Dec. No. W-11117.)

With respect to the value of personal property, the Commission considered among other things, photographs, and statements from disinterested third parties who had personal knowledge of the facts. In one case the Commission considered track records in the process of determining the value of race horses. (*Claim of Vera A. Hoch, et al.*, Claim No. W-508, Dec. No. W-254.) The owner's economic and social position was occasionally an element to be weighed in the evaluation of all evidence concerning the value of his household furniture and personal effects. (*Claim of Harry Adams Raider*, Claim No. W-2346, Dec. No. W-509.)

Business property was evaluated wherever possible on the basis of the company's books and records, from sworn statements of employees setting forth the damage sustained by the company, the cost of the individual items, such as machinery, equipment, tools, raw material, goods in process, and finished merchandise, with appropriate depreciation. (*Claim of Paramount Pictures Corporation, et al.*, Claim Nos. W-12062 and W-12063, Dec. No. W-14966.)

Where a claimant asserted that the destroyed and damaged facilities were replaced or restored after the war, and additional equipment was purchased so that the cost of reconstruction exceeded the losses sustained during the war, the Commission confined the award to the actual losses, as reported shortly after the war by an accounting and auditing firm. (*Claim of Walter Forman*, Claim No. W-1122, Dec. No. W-8730.) Where the losses were based on values included in a regular inventory, the values of such inventory were used as the basis for the determination of damage. (*Claim of Chinese Engineering & Development Co., Inc.*, Claim No. W-756, Dec. No. W-1999.)

In a claim where the loss of machines for the manufacturing of shoes was asserted, claimant estimated the value of the machines on the basis of sales prices of the year 1958 adopted as a result of a court order in an anti-trust action (*U.S. v. United Shoe Machinery Corporation*, 110 F. Supp. 289). Since it was apparent that the values of shoe machines on the date of the loss during World War II were less than the values in 1958, claimant reduced the values to the 1943-1944 level on the basis of the difference in the Consumer Price Index. Since this formula, as applied, appeared to provide an accurate reflection of factory costs on the date of loss, the Commission adopted this method

in its determination of value as being reasonable and non-speculative under the circumstances, since claimant's base price for machines included liberal deductions for age of machines, salvage values, and amounts received from lessees. (*Claim of United Shoe Machinery Corporation*, Claim No. W-9796, Dec. No. W-21327.)

One claimant corporation contended that its affiliate in Poland suffered losses as a result of the extraction of crude oil including natural gas and casinghead gasoline by German and Soviet occupation forces. In determining the value of the crude oil, natural gas, and casinghead gasoline lost, the Commission deducted from the average prices obtained therefor the expenses incurred for royalties, taxes, labor, management, administration, transportation and other charges and found that, at the time of loss, the crude oil had a value of \$0.50 per barrel, the natural gas was worth \$1.00 per cubic meter, and the undistilled (casinghead) gasoline was worth \$2.00 per barrel. (*Claim of Mobil Oil Corporation*, Claim No. W-2301, Dec. No. W-18241.) However, in a claim for the loss of extracted crude oil and casinghead gasoline in the Netherlands East Indies, the Commission found that at the time of the loss due to different economic conditions in the Far East, the value of the crude oil was \$0.25 per barrel, and the value of the casinghead gasoline was \$1.00 per barrel. (*Claim of Esso Standard Eastern, Inc.*, Claim No. W-17532, Dec. No. W-21445.)

In one claim a list was presented of 136 cases and parcels of medical and hospital supplies ordered and held for various customers, which were confiscated by the Japanese Navy. Claimant submitted invoices for these property items indicating their sales prices. The Commission found that the cost of the various items to the claimant was approximately 50% of the invoice price. Consequently, the value of the invoiced goods was established at 50% of the price shown. (*Claim of Associated Drug Company Federal Inc., U.S.A.*, Claim No. W-7234, Dec. No. W-20305.)

In some cases claimants had filed war damage reports with foreign governmental authorities after World War II. Subsidiaries of United States corporations in the Netherlands East Indies filed such reports with the Government of the Netherlands. In determining the amount of war damage sustained, the Commission gave considerable weight to such reports, which stated the percentage of damage to each listed asset and the amount of depreciation allocable to each item from the time of acquisition to the date of loss. (*Claim of Standard Oil Company of California, et al.*, Claim No. W-18150, Dec. No. W-21319.)

In some cases, the amount of damage was appraised by military occupation authorities shortly after it occurred. In one instance the Commission adopted the appraisal by German military authorities during the occupation of Yugoslavia as indicating the value at that time of seized furniture, material, supplies and merchandise. (*Claim of International Telephone and Telegraph Corporation*, Claim No. W-22743, Dec. No. W-19902.) Also, Japanese records kept during the occupation by Japan of the Netherlands East Indies were considered as probative evidence to establish the amount of crude oil and casinghead (undistilled)

gasoline extracted by Japanese authorities during World War II. (*Claim of Esso Standard Eastern, Inc.*, Claim No. W-17532, Dec. No. W-21145.)

In a claim based upon merchandise damaged in transit, the value placed upon the property for insurance purposes was accepted by the Commission as the value of the goods. (*Claim of International Telephone and Telegraph Corporation*, Claim No. W-22740, Dec. No. W-19903.)

Where evidence of record was sufficient to establish the value of improvements to real property as of some date prior to its loss, the Commission generally deducted 2% per annum for depreciation from the date of such evaluation to the date of loss. A deduction of 5% per annum was commonly made for machinery, equipment, furniture and fixtures. (*Claim of Luis C. Roever, et al.*, Claim No. W-7630, Dec. No. W-20905.)

Where claimants asserted that they had suffered losses because a concrete air-raid shelter had been constructed on their unimproved land during World War II, and sought an award for the cost of removal of the bunker and the filling of the excavation, the Commission held that the proper criterion for the evaluation of war losses is the diminution in value of the property by reason of damage or destruction thereof during the statutory period as a direct result of military operations or special measures. The erection of the air-raid shelter on the unimproved land did not necessarily result in a diminution in the value of the property. The evidence submitted by claimants indicated only what the probable cost of removal of the shelter and filling of the excavation would be, and failed to establish an actual loss during the statutory period. (*Claim of Joachim Auerbach, et al.*, Claim No. W-8063, Dec. No. W-19886.)

In the Matter of the Claim of

Claim No. W-1184
Decision No. W-1

BRUNO ADAMSKI

Under Title II of the War Claims Act
of 1948, as amended by Public Law
87-846

*Award under Section 202, Title II, of the 1948 Act not increased
by interest, in accordance with legislative intent.*

PROPOSED DECISION

This claim, for \$18,830.00, under Section 202(a), Title II of the War Claims Act of 1948, as amended, is based upon the asserted destruction in 1944 of improved real property located at 69 Sienna Street, Warsaw, Poland. Claimant, BRUNO ADAMSKI, has been a national of the United States since his birth in Detroit, Michigan, on June 14, 1909.

Section 202(a) of the Act authorizes the Commission to determine the validity and amount of claims of nationals of the United States for:

(a) loss or destruction of, or physical damage to, property located in . . . Poland . . . which loss, destruction, or physical damage occurred during the period beginning September 1, 1939, and ending May 8, 1945 . . . *Provided further*, That such loss, destruction, or damage must have occurred, as a direct consequence of (1) military operations of war or (2) special measures directed against property in such countries or territories during the respective periods specified, because of the enemy or alleged enemy character of the owner, which property was owned, directly or indirectly, by a national of the United States at the time of such loss, damage or destruction. (76 Stat. 1107 (1962) ; 50 U.S.C. App. 2017a (1964).)

In the claim filed by this claimant under the Polish Claims Agreement of 1960 (Claim No. PO-5889; Final Decision entered on April 23, 1963), the Commission determined that BRUNO ADAMSKI owned a 25% interest in land and buildings located at 69 Sienna Street, Warsaw, Poland, and that as a result of military action in 1944 these structures were damaged to the extent of 77% of the prewar value.

On the basis of the entire record, including the material contained in the claim against Poland, the Commission finds that the amount of the damage to the buildings was \$69,561.50. Accordingly, claimant's loss (25%) amounted to \$17,390.37. The Commission concludes that claimant is entitled to an award in that amount pursuant to the provisions of Section 202(a) of the Act.

An important question presented in this claim is whether the award should be increased by interest.

Unlike other statutes administered by the Commission, Title II of the Act does not indicate by express language the intent of the legislature in this respect. Under the Yugoslavian Claims Program, the Commission awarded interest with respect to claims against Yugoslavia for the nationalization or other taking of property, relying in part on the provisions of Sections 7(a) and 8(c) (5) of the International Claims Settlement Act of 1949, as amended (64 Stat. 12 (1950) ; 22 U.S.C. 1626(a) and 1627(c) (5) (1950)). Both sections contain directions to the Secretary of the Treasury to pay on account of awards certified by the Commission "accrued interest." Principles of international law, which the Commission was required to apply in making determinations (Section 4(a) ; 22 U.S.C. 1623(a) (1950)), likewise warranted the conclusion that interest should be allowed in such claims.

(III Whiteman, Damages in International Law 1913 (1937).) The same considerations operated in favor of granting interest on claims for the taking of property by Poland since such claims are also governed by the same statute including Sections 7(a) and 8(c) (5). (See *Claim of John Hedio Prouch*, Claim No. PO-3197, Dec. No. PO-652, 17 FCSC Semiann. Rep. 47 (July-Dec. 1962).)

In connection with claims against Panama for the taking of property, the Commission concluded that interest should not be allowed despite the fact that Sections 4(a), 7(a) and 8(c) (5) of the International Claims Settlement Act of 1949, as amended, were applicable. This conclusion was based upon the ground that the funds available for the payment of these claims were inadequate. (See *Claim of Martin M. Conklin*, Docket No. PAN-3, Dec. No. PAN-1.)

The directions to the Secretary of the Treasury concerning the payment of awards granted pursuant to the Act here under consideration, expressed in Section 213 (76 Stat. 1111 (1962); 50 U.S.C. App. 2017 l (1962)), omit any reference to interest. Moreover while Sections 7(c), (d), (e) and (f) of the International Claims Settlement Act of 1949, as amended, are expressly incorporated by reference, Sections 7(a) and 8(c) (5) of the same Act, which provide for "accrued interest on such awards as bear interest," are omitted. (Section 215, 76 Stat. 1112 (1962); 50 U.S.C. App. 2017 n (1962).) Under the rules of statutory construction (II Sutherland, Statutory Construction 412 (1943)), it is proper to conclude that the failure to incorporate Sections 7(a) and 8(c) (5) or language of similar import necessarily implies that the Congress did not intend that interest should be allowed in any award under Title II of the Act.

Having fully considered the question pertaining to the awarding of interest, the Commission is constrained to hold that the allowance of interest in claims under Title II of the Act would not conform with the legislative intent. Accordingly, no interest is allowed in this claim.

AWARD

An award is hereby made to BRUNO ADAMSKI in the amount of Seventeen Thousand Three Hundred Ninety Dollars and Thirty-Seven Cents (\$17,390.37).

Dated at Washington, D.C.

March 25, 1964.

No interest on awards.—Awards made under Title II of the 1948 Act were based upon the amount of the compensable loss suffered, and were stated in that principal amount only, without interest thereon. The *Adamski* decision sets forth the Commission's basis for this practice, as consonant with legislative intent, particularly in view of the fact that Congress did not incorporate Sections 7(a) and 8(c) (5) of the International Claims Settlement Act of 1949, as amended, into Title II of the War Claims Act of 1948, as amended.

Procedures—Time for filing claims.—A number of claims under Title II were denied as untimely filed. Unlike the Polish claims program, where the Commission's regulations provided the only limitation upon the time for filing claims (see *Estate of Oscar Rosenthal, Deceased*, appearing on page 562), the 1948 Act provided in Section 210 that "within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later, the Commission shall give public notice by publication in the Federal Register of the time when, and the limit of time within which claims may be filed, which limit shall not be more than eighteen months after such publication." Title II was enacted on October 22, 1962, and the necessary appropriations legislation was enacted on May 17, 1963. On July 16, 1963 the Commission published notice in the Federal Register that claims under Title II could be filed on or before July 15, 1964. On July 14, 1964, by similar notice, the deadline was extended to January 15, 1965. Section 580.2(c) of the Commission's regulations provided an additional 30 days within which to formalize a claim by submission of a properly executed claim form, if a claimant's initial written indication of intention to file a claim was received within 30 days prior to the expiration of the filing period. Where a claimant's first communication to the Commission regarding a claim was received after January 15, 1965, the claim was denied as not timely filed. (*Claim of Elsa O. Dubs*, Claim No. W-22438, Dec. No. W-9036, 23 FCSC Semiann. Rep. 76 (July-Dec. 1965).) In view of the statutory limitation, the Commission was without authority to extend the filing period further.

In a claim which was denied by Proposed Decision on the ground that it had not been owned continuously by United States nationals from the date of loss to the date of filing, the property had been owned at the time of loss by claimant's father, who was then a United States national. The father died after World War II and the claim was inherited by claimant's mother, a German national. She died on April 28, 1961, at which time the claimant, a German national, succeeded to the claim. In objecting to the Proposed Decision claimant contended that on February 24, 1950, her mother had submitted to the War Claims Commission a Report of Loss or Damage to Real or Personal Property Arising Out of World War II (WCC Form 801), that this was done on behalf of claimant's father who was then alive, and that it constituted a filing of a claim, so that the claim was owned continuously by a United States national from the date of loss to the date of filing. The Commission held in its Final Decision that

the submission of the report to the War Claims Commission could not be deemed a "filing with the Commission," to the date of which ownership by a United States national is required under Section 204 of the Act, since "Commission" is defined in Section 201(b) as "the Foreign Claims Settlement Commission of the United States established pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279)." The Commission noted further that the form on which the report was made to the War Claims Commission contained a statement that it did not constitute a formal claim for benefits; and also that Section 580.2(b) of the Commission's regulations provides that "Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing this claims program of an intention to file a claim for World War II losses, shall not be considered as a timely filing of a claim under Public Law 87-846." Hence, the only timely filing of this claim was that which occurred after the enactment of Title II on October 22, 1962, and was not effected by a national of the United States. The denial of the claim was affirmed. (*Claim of Hanne-Lore Kraly*, Claim No. W-5831, Dec. No. W-2886.)

Joinder.—As in other claims programs, persons having ownership interests in property which was the subject of claims which had been filed on time by other persons, frequently were granted permission to join in those claims although the time for filing had expired; and in some instances joinder was permitted in claims even after the issuance of Final Decisions thereon. (*Claim of Mary E. Logan, et al.*, Claim No. W-1494, Dec. No. W-5728.)

Burden of proof.—Section 531.6(d) of the Commission's regulations applied to Title II claims as well as to other claims programs, providing that "The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his claim." Necessarily, many claims were denied for failure to establish some element without which they could not be found compensable under the Act, despite the assistance offered claimants by Commission staff attorneys, personal interviews, and the efforts of Commission field offices in Poland and Germany. Official documentation was available to claimants from sources in many of the countries involved in claims under Title II, and where such primary evidence was not available, the Commission often was able to make findings favorable to claimants on the basis of reliable and probative secondary evidence. A special situation existed with respect to Albania with which communications had been all but non-existent since 1940. Most claimants alleging property losses in Albania could offer no evidence in support of their claims other than affidavits from local Albanian authorities which came to claimants unsolicited, accompanied by requests for payment of \$100.00, and which contained certain apparent irregularities and inconsistencies with general knowledge concerning military campaigns and property losses in Albania. Although of little probative value as to the extent of ownership and the value of property, such documents did indicate some link between the claimants and destroyed property in Albania. In these circumstances, as the most equitable

solution, the Commission relied largely upon personal interviews with Albanian claimants, accepting the affidavits to the extent that they were supported by sworn credible testimony and not contradicted by other information available to the Commission. Thus, where the record included an affidavit from local authorities of the District of Kolonje, Albania, claimant's sworn testimony, reports of personal interviews and telephone conversations between claimant and Commission staff attorneys, claimant's family tree, and correspondence between claimant and his wife who had resided in Albania since birth, the Commission found that claimant had established his ownership interest in the property and granted an award. (*Claim of John Peter*, Claim No. W-7624, Dec. No. W-9424.) On the other hand, where claimant had no personal knowledge of the property or his ownership interest therein except for an unsolicited affidavit from Albanian authorities, the Commission held that the evidence of record was of insufficient probative value to justify an award, and denied the claim. (*Claim of Nicolaos Kamberis*, Claim No. W-6715, Dec. No. W-9509.)

In one instance, after an award of \$1,520.00 was made in a Proposed Decision for the loss of five stores in Tepelene, Albania, and a portion of the claim based upon certain land was denied for lack of proof, claimant objected to the amount of the award and submitted what purported to be an original construction contract dated November 17, 1939, signed by himself and another person. Laboratory analysis revealing that the purported contract could not have been prepared or signed before 1946, the Commission issued an Amended Proposed Decision finding that claimant, by submission of the document, had forfeited all rights to an award, and denied the claim. (*Claim of Sadik Sheh*, Claim No. W-6073, Dec. No. W-16962.)

Where, in conjunction with wartime destruction of real property, a claim was made for the loss of personal property on the premises, such as household furnishings, agricultural equipment, farm animals, and foodstuff, the Commission sought to determine whether the claimant had resided on the property at any time during the years preceding World War II, and weighed this factor with other evidence on the question of ownership. Where a claimant stated that he had last resided on his property in Albania in 1917, and his brother and sister had lived there until the improvements were destroyed in 1944, the Commission held that claimant had failed to establish his ownership of the personal property at the time of loss, and denied that portion of the claim. (*Claim of Vassil Christ Papanickolas*, Claim No. W-537, Dec. No. W-16495.)

Even where other necessary elements of a claim were established by the record, occasionally a claim was denied for lack of evidence upon which the Commission might determine the amount of loss suffered. A portion of a claim based upon asserted damage to the property of a corporation in which claimants held stockholder interests was denied for this reason. Claimants had submitted evidence of readjusted building insurance values following damage to the properties, but had not provided evidence of the total loss sustained by the corporation through war damage,

or evidence of the proportionate loss to the individual stockholders. (*Claim of Vernon Stroud, Executor of the Estate of Edith Straus, Deceased, et al.*, Claim No. W-8907, Dec. No. W-21529.)

Dismissal of claims.—In a number of cases the claimant died after the claim was filed. If the claimant left no relatives or heirs who could assist in the development of the claim or to whom an award could issue if the claim were found to be compensable, the claim was dismissed without prejudice by Order of the Commission. (*Claim of Abraham Weiss*, Claim No. W-018 (Order), 22 FCSC Semiann. Rep. 58 (Jan.-June 1965).) Similar action was taken by the Commission where correspondence directed to claimant was returned by the United States Post Office marked "Moved, left no address," and efforts to obtain a later address through the local Postmaster were unavailing. (*Claim of Gregorios Seambalis*, Claim No. W-1140 (Order).) A claimant's request for withdrawal of his claim because he did not wish to accept the award made in a previously issued Proposed Decision was granted by the Commission without prejudice. (*Claim of John E. Kuremetis*, Claim No. W-2082 (Order).)

Recertification of awards.—Compensation for war damage to property in Bulgaria, Hungary, and Rumania was provided in Section 303(1), Title III, of the International Claims Settlement Act of 1949, as amended, rather than in Title II of the War Claims Act of 1948, as amended, and awards were limited to two-thirds of the loss or damage actually sustained. The amount available in the Hungarian Claims Fund was much lower in proportion to the total amount of awards payable from that fund than was the case with the Bulgarian Claims Fund and the Rumanian Claims Fund. Therefore, claimants receiving awards against Hungary under Section 303(1) of the 1949 Act fared less well with respect to actual payment received than did those with awards against Bulgaria or Rumania, and less well than was anticipated for claimants under Title II of the War Claims Act of 1948 (Title II having been added by amendment enacted October 22, 1962). Accordingly, Section 209(b) of Title II directed the Commission to recertify to the Secretary of the Treasury, for payment out of the War Claims Fund, awards theretofore made on claims against Hungary under Section 303(1) of the 1949 Act. Payments on account of such recertified awards were not to be made until the percentage of distribution on awards under Title II of the War Claims Act of 1948 exceeded the corresponding percentage of distribution on the recertified awards, and in no event were payments on recertified awards to exceed 40% of the amount of such awards. Of the 1,153 awards issued by the Commission in the Hungarian claims program, 362 were based upon Section 303(1) of the 1949 Act; and all of these, in the total amount of \$5,700,710.70, were recertified to the Secretary of the Treasury as required by Section 209(b) of the 1948 Act.

OTHER PROGRAMS ADMINISTERED BY THE COMMISSION

Under the War Claims Act of 1948, as amended.

In addition to the ten major international claims programs discussed heretofore, the Commission administered other claims programs arising principally from the War Claims Act of 1948 and amendments thereto. As indicated in the Introduction on page 1, on July 1, 1954 the Foreign Claims Settlement Commission inherited from the War Claims Commission programs including claims of American military personnel not adequately fed as prisoners-of-war, or inhumanely treated or forced to perform uncompensated labor, claims of American civilians for detention benefits, and claims of Philippine religious organizations affiliated with religious organizations in the United States for relief furnished to American servicemen or civilians during the war and for reconstruction of their educational, medical, or welfare facilities. (Certain death and disability benefits were provided for American civilians in the War Claims Act of 1948, but claims therefor were made to the Bureau of Employees' Compensation rather than to the War Claims Commission or the Foreign Claims Settlement Commission.)

The War Claims Act of 1948 was amended by Public Law 615, 83d Congress (68 Stat. 759), approved August 21, 1954, which authorized the payment of prisoner-of-war compensation to members of the Armed Forces of the United States detained during the Korean conflict, and the payment of benefits to civilian American citizens who were interned or who went into hiding in Korea to avoid internment. Another amendment enacted under Public Law 744, 83d Congress (68 Stat. 1033), approved August 31, 1954, rendered eligible for World War II detention, death, and disability benefits, certain American citizens who previously had been excluded because their claims were within the purview of certain other remedial legislation, such as the Federal Employees Compensation Act (39 Stat. 742 (1916)), the Missing Persons Act (56 Stat. 143 (1942)), or the War Hazards Compensation Act (56 Stat. 1028 (1942)). This amendment also provided benefits to certain previously ineligible merchant seamen who had been interned, and compensation to American citizens held as prisoners-of-war while serving in the armed forces of allied governments. It also made provision for partial reimbursement to American citizens and business firms for losses of bank deposits and other credits sequestered by the Imperial Japanese Government in the Philippines during World War II.

A further amendment by Public Law 997, 84th Congress, approved August 6, 1956 (70 Stat. 1063), extended the benefits previously provided for religious institutions in the Philippines to include all religious organizations functioning in the Philip-

panies of the same denomination as religious organizations functioning in the United States.

By virtue of Public Law 87-617, approved August 31, 1962 (76 Stat. 413), the War Claims Act of 1948 was further amended to provide benefits to Guamanians killed or captured by the Imperial Japanese Government on Wake Island during World War II. Under the original provisions of the Act, only American citizens were eligible for such benefits. The amendment included a number of inhabitants of Guam who, though nationals of the United States, were not citizens of the United States.

As of the time of virtual completion of the various programs discussed herein, awards had been made totalling \$123,549,843 in 359,264 claims by United States and Filipino prisoners-of-war, \$338,701 in 207 claims by allied military prisoners-of-war, \$8,880,268 in 9,459 claims by prisoners-of-war in Korea, \$17,774,151 in 11,488 claims by civilian internees of World War II, \$16,774 in 10 claims by civilian internees in Korea, \$338,250 in 173 claims by merchant seamen, \$28,807,977 in 162 claims by religious organizations, \$10,570,917 in 3,167 claims for sequestration of property, and \$91,782 in 35 claims by Guamanians. From time to time additional awards have been made as required by private relief bills or advice from the Department of Defense concerning the correction of military records.

Lake Ontario Claims Program.

Under Public Law 87-587 (76 Stat. 387), approved August 15, 1962, the Foreign Claims Settlement Commission was authorized to accept and determine the validity of claims of United States citizens who sustained damages in 1951 and 1952 to their property situated on the southern shore of Lake Ontario. It had been asserted that the damage was caused by the maintenance and operation of Gut Dam built by the Canadian Government in 1903 on the St. Lawrence River in Canadian territory following an agreement with the United States Government. The Agreement provided, among other things, that if the construction and operation of the dam caused damage to property of United States citizens, the Government of Canada should pay compensation to the property owners.

In 1952 the Canadian Government made an offer to submit the question to arbitration. However, no agreement was reached in this respect. The United States Government felt that discussion might better be served if a suitable analysis of the factors involved provided more information concerning the liability of the Canadian Government. In order to achieve this aim, Public Law 87-587 was enacted and the Foreign Claims Settlement Commission was instructed therein to prepare and submit to the President a report of its findings for such action as he deemed appropriate. The statute further provided that if the Governments of Canada and the United States subsequently entered into an agreement providing for arbitration or adjudication of the claims, the Commission should discontinue its consideration of them and transfer all records and documents relating to the claims to the Secretary of State or, upon his request, return them to the claimants.

The Commission proceeded with the examination of claims and made appropriate studies in order to reach conclusions concerning their validity; but withheld publication of its findings and decisions concerning individual claims inasmuch as the Department of State at the close of 1964 advised that an agreement with the Government of Canada appeared to be imminent. Such an agreement was signed by representatives of the two governments on March 25, 1965 (*Agreement Between the Government of the United States of America and the Government of Canada Concerning the Establishment of an International Arbitral Tribunal to Dispose of United States Claims Relating to Gut Dam*, T.I.A.S. 6114). As a result, the Commission discontinued further preparation of decisions and provided for the transfer of its records and materials to the Department of State.

Awards supplementing those of Philippine War Damage Commission.

Under Public Law 87-616, approved August 30, 1962 (76 Stat. 411), as amended by Public Law 88-94, approved August 12, 1963 (77 Stat. 122), the Commission was authorized to provide for the unpaid balance of awards made by the former Philippine War Damage Commission under the Philippine Rehabilitation Act of 1946, as compensation for damage to and destruction of property in the Philippines during World War II. The new legislation did not authorize the filing of any new claims or the reconsideration of old claims. It authorized additional payments only to persons or the successors of persons to whom payments had been made on account of awards granted by the Philippine War Damage Commission, which had completed its functions on March 31, 1951.

Under the Philippine Rehabilitation Act of 1946, awards of \$500.00 or less were paid in full. Grantees of higher awards received initial payments of \$500.00, and were limited by the statute to receipt of payment of 75% of the amount of any award in excess of \$500.00. In practice, the available funds permitted payment of only 52.5% of the amounts of awards exceeding \$500.00, and the outstanding balance of 22.5% constituted the "unpaid balance of awards" which the Foreign Claims Settlement Commission now was empowered to administer. In addition, some claimants had received compensation for their property losses under Section 7 of the War Claims Act of 1948 which provided benefits to religious organizations in the Philippines. Under the statute, any such payments were added to payments received under the Philippine Rehabilitation Act of 1946, and the unpaid balance, if any, was the difference between the total received under the two Acts and the 75% limitation of the 1946 Act. As a result, some claims were denied for lack of an unpaid balance.

Public Law 87-616 was amended by Section 3 of Public Law 88-94, approved August 12, 1963 (77 Stat. 122), providing (1) that no payment in excess of \$25,000.00 may be made on any claim; (2) that no former commissioner or employee of the Philippine War Damage Commission would be eligible to receive compensation on account of services rendered or as reimbursement on account of expenses incurred in connection with any

application under this program; and (3) that the acceptance by any claimant of a payment under the statute would be considered as a full and final settlement of all claims arising out of the awards originally granted by the Philippine War Damage Commission.

The Commission completed its determinations under this program on December 23, 1964, certifying awards in the total amount of \$40,802,059.72 on 76,250 claims, and denying 2,678 claims. The following two decisions illustrate bases for denial.

In the Matter of the Claim of

PWDC Claim No. 472212

SACRED HEART OF JESUS INSTITUTION

Where payments under the Philippine Rehabilitation Act of 1946 and Section 7 of the War Claims Act of 1948, as amended, on account of the same loss, exceed the maximum amount which could have been paid by the Philippine War Damage Commission (1,000 pesos plus 75% of the amount approved for such loss), claimants are not entitled to receive further payments under Public Law 87-616.

DECISION

The Commission considered the above-mentioned claim filed pursuant to Public Law 87-616 for the unpaid balance of an award granted by the Philippine War Damage Commission under the Philippine Rehabilitation Act of 1946.

Section 1 of Public Law 87-616 provides in part as follows:

* * * No payment shall be made under this Act to any person, or to his successors in interest, on account of any award unless payment was made on such award under the Philippine Rehabilitation Act of 1946, and the maximum amount paid under this Act, when added to amounts paid under the Philippine Rehabilitation Act of 1946 and Section 7 of the War Claims Act of 1948 on account of any claim shall not exceed the aggregate amount of claims approved in favor of such claimant after reduction under the last proviso of Section 102(a) of the Philippine Rehabilitation Act of 1946, or \$25,000 whichever is lesser.

The last proviso of Section 102(a) of the Philippine Rehabilitation Act of 1946 provides that in case the aggregate amount of the claims which would be payable to any one claimant exceeds \$500, the aggregate amount of the claims approved in favor of such claimant shall be reduced by 25 per centum of the excess over \$500.

A claim was filed by claimant with this Commission pursuant

to Section 7 of the War Claims Act of 1948 for damages to the same property included by claimant in the claim filed under the Philippine Rehabilitation Act of 1946. An award was made on this claim.

The amounts previously paid to claimant under the Philippine Rehabilitation Act of 1946 and Section 7 of the War Claims Act of 1948 on account of the same property exceed the aggregate amount of claims approved in favor of the claimant under the Philippine Rehabilitation Act of 1946, after reduction under the last proviso of Section 102(a) of said Act.

The damages to the property included in the present claim having been compensated for to the fullest extent provided for by law, this Commission is without authority to grant any further award, and the claim is therefore accordingly denied.

Dated at Washington, D.C.

November 4, 1964.

In the Matter of the Claim of

FCSC Claim No. 1393

**THE GOVERNMENT OF THE REPUBLIC
OF THE PHILIPPINES**

Timely filing of claim by Government of the Republic of the Philippines as Parens Patriae in behalf of its citizens who, although eligible to receive awards under Public Law 87-616, filed their claims after the deadline for such filing, held to have been in the nature of an agency filing for such citizens, thus enabling such claims to be considered as timely within the meaning of the statute.

Claim by the Government of the Republic of the Philippines as Parens Patriae in behalf of its citizens who filed claims and received awards from the Philippine War Damage Commission but who failed to file under Public Law 87-616, held not to be acceptable under the statute since payment to the Government of the Philippines of the amounts of such awards would be contrary to the terms of the statute and the intent of Congress.

Government of the Republic of the Philippines held not to be a successor in interest to an original payee of an award granted by the Philippine War Damage Commission as that term is used in the statute; thus claims by that government as "legal heir of deceased claimants who died without other rightful heirs to succeed them" is denied.

FINAL DECISION

This claim under Public Law 87-616, as amended by Public Law 88-94, is brought by the GOVERNMENT OF THE RE-

PUBLIC OF THE PHILIPPINES as "*Parens Patriae* and or as trustee" in behalf of its citizens who were unable to file claims on time, and, in its own behalf as legal heir of claimants under the Philippine Rehabilitation Act of 1946 who died without rightful heirs. It was denied by Proposed Decision issued July 15, 1964. Therein it was decided that the Commission would authorize payments only upon the application of individuals who were the original payees as determined by the former Philippine War Damage Commission or to certain successors in interest to such persons in the case of their death. It was concluded that the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES did not qualify as an original payee, or as a successor in interest within the contemplation of the statute.

A copy of the Proposed Decision was duly served upon the claimant, who objected thereto and requested a hearing on the matter before the Commission. A brief in support of claimant's contentions was submitted and on November 30, 1964, the Honorable Arturo A. Alafritz, Solicitor General of the Republic of the Philippines, appeared and presented oral argument on behalf of the claimant.

In substance, the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES asserts three claims. First, in its capacity as *Parens Patriae*, a claim was asserted in behalf of those Philippine citizens who although eligible to receive payments under Public Law 87-616, did not file appropriate applications within the time specified in the statute. Second, also as *Parens Patriae*, a claim was filed in behalf of those citizens of the Philippines who, although eligible to receive payments under Public Law 87-616, failed to file applications. Third, a claim is asserted by the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES in its own behalf as successor in interest to deceased citizens of the Philippines who would have been eligible to receive payments, but who died without rightful heirs. The only claims of Philippine citizens which are excluded from this "omnibus" claim are those where the records of the Commission show that affirmative statements have been made that the potential claimants do not wish to file claims under the statute.

The Commission will first consider the argument of the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES regarding the claims submitted as *Parens Patriae* in behalf of its citizens who submitted formal applications on the appropriate form but who did not file them on or before December 23, 1963, the statutory time limit imposed by the statute, and, in behalf of those of its citizens who have not filed applications for the unpaid balances of awards previously granted.

Claimant contends that a state not only has a right to act as *Parens Patriae* in behalf of its people, but also has an obligation to act as guardian of the private rights of its citizens. In support of this contention numerous cases and authorities have been cited.

In its argument before the Commission, the claimant asserts that should the Commission decide to authorize payment of the unpaid balances of awards which would be payable to Philippine citizens who have not filed applications, the fund would be held in trust and would be paid out to individual claimants who applied within the statutory period prescribed by Philippine law.

The Commission has fully considered the arguments of claimant presented in its brief and at the oral hearing. With respect to the claim submitted on behalf of individual Philippine claimants who filed formal applications, although filed after the December 23, 1963 deadline, the Commission finds that the "omnibus" claim of the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES will be considered as a filing in behalf of such persons, the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES having in effect filed as agent for all such persons.

Accordingly, the Commission concludes that these claims, numbering around 725, shall be considered as timely filed within the meaning of the statute and regulations of the Commission promulgated thereunder. Decisions will therefore issue on the merits of each such claim.

We next turn to the question of whether the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES may file and receive payment in its capacity as *Parens Patriae* in behalf of its citizens who have unpaid balances on awards granted by the Philippine War Damage Commission but who have not filed claim applications with the Commission. In resolving this issue, the Commission is bound by the specific terms and provisions of the statute.

Section 1 of Public Law 87-616 provides in pertinent part that "No payments shall be made under this Act to any *person*, or to *his successor in interest* (emphasis added), on account of any award unless payment was made on such award under the Philippine Rehabilitation Act of 1946" Section 3 of the Act directs the Commission to give adequate publicity in the Philippines to the provisions thereof and by utilization of the records of the former Philippine War Damage Commission to attempt to ". . . notify *individual claimants* of their right to file applications for payment. . . ." (Emphasis added.) The Commission complied with the statutory mandate and, indeed, went beyond the statutory requirement in publicizing this claims program.

Section 5(a) of Public Law 87-616, as amended by Public Law 88-94, provides that:

Any balance of the appropriation made pursuant to section 8 remaining after the payments authorized by the first section of this Act have been made and after any administrative expenses incurred by the Commission in connection with such payments have been paid shall be paid into a special fund in the United States Treasury to be used for the purpose of furthering educational exchange and other educational programs to the mutual advantage of the Republic of the Philippines and the United States in such manner as the Presidents of those two Republics shall from time to time determine. There shall be withheld from the payment authorized by the preceding sentence a sum equal to the difference between \$73,000,000 (less administrative expenses) and the total amount which would have been paid to the claimants under the provisions of Public Law 87-616, which sum shall revert to the general funds in the United States Treasury.

Under this section of the amended statute, the maximum amount which may be paid on any award to a claimant is \$25,000 and the amount of any award in excess thereof, which in the absence of the amendment would be due, must be reserved for the educational fund; and after payment of the maximum amounts of awards and administrative expenses, any funds remaining from the \$73 million appropriated would revert to the general funds of the United States Treasury.

Since the wording of the statute is clear and unambiguous the Commission concludes that on the basis of the express language of the statute itself, it is precluded from making payment to the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES on a claim in its capacity as *Parens Patriae* in behalf of Philippine citizens who have not filed applications for benefits. If it concluded otherwise, the results would clearly have the effect of rendering a nullity the provision of the statute which directs a reversion to the general funds of the Treasury.

It has been emphasized that in the determination of claims the Commission is authorized, under certain applicable statutes, to apply principles of justice and equity. However, the Commission cannot exercise its equitable jurisdiction to reach a decision the result of which would be directly contrary to the terms of the statute that it is administering.

If there was doubt concerning the clarity of the language of the statute on the issue before us, the matter is resolved by the report of the Committee on Foreign Affairs of the House of Representatives on H.R. 11721, which upon enactment became Public Law 87-616. (House Rep. No. 1715, 87th Congress, 2d

Session.) In the section by section analysis of the bill, at page 21, it is stated that "After all approved claims have been paid up to the maximum permitted, the balance of the appropriation shall revert to the United States Treasury."

Further, in the debate on the floor of the House of Representatives on Tuesday, April 30, 1963 (Cong. Record, April 30, 1963, p. 7045), on the Senate-passed amendment authorizing the payment of the fund directly to the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, an amendment which was ultimately rejected by the Congress, Congressman Zablocki of Wisconsin in explaining the proposed legislation, stated as follows:

And a final saving provision was put into that law, to the effect that any funds not used to pay off the original claimants must revert to the Treasury of the United States. By the most recent estimate of the United States Foreign Claims Settlement Commission, this last provision may save the United States taxpayers between \$10 to \$20 million. Some of the claimants are dead, some cannot be found, and some have been paid off under special laws approved by Congress during the 1950's. This money, therefore, will revert to the United States Treasury. The total cost of settling the Filipino claims outstanding since World War II is now expected to amount to between \$55 to \$65 million. In my opinion, the 1962 law provides the least costly, the most direct, the most effective, and the most equitable way of settling these long overdue claims.

The legislative history of Public Law 87-616 as amended by Public Law 88-94 is replete with similar statements, both in the House and Senate, which clearly evidence the congressional intent that payments may not be authorized in any instance where individual claimants, original payees or their successors in interest, failed to file a claim with the Commission.

Accordingly, the Commission is constrained to conclude that the claim by the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES as *Parens Patriae* in behalf of Philippine citizens who have not filed claims with the Commission, must be and is hereby denied.

There remains for determination the issue of the claim of the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES in its own behalf as "legal heir of deceased claimants who died without other rightful heirs to succeed them."

Claimant contends that under Philippine municipal law the State is the legal heir of those deceased claimants who died intestate without heirs. In support of this contention, articles 961 and 1011 of the Civil Code of the Philippines are cited, the under-

lying principle of which is the theory of escheat. Numerous cases decided by the courts of the Philippines and the United States on the theory of escheat have been cited in claimant's brief.

Assuming *arguendo* that the Commission could accept claimant's contention that it is a "successor in interest," as that term is used in the statute, it must be pointed out that claimant has not submitted evidence on any specific claim to establish that the original payee is deceased and that he died without rightful heirs and thus the Philippine Government is entitled to his estate under the provisions of the cited Civil Code of the Philippines.

Moreover, even if such evidence was presented, this claim must fail because, in the view of the Commission, the term "successor in interest" may not be construed so broadly as to include the State under the theory of escheat.

In the report of the Committee on Foreign Affairs, *supra*, on page 21, there is an explanation of the Committee's understanding as to who would be able to file claims and receive payments under Public Law 87-616. There it is stated, "Only claimants of record are allowed to file claims or their successors in interest (heirs, devisees, legatees, etc.)." In the usual and commonly understood definition of the words, in matters of estates and inheritance, "person" and "successor in interest" do not include a sovereign state by virtue of the doctrine of escheat.

In this instance the Commission concludes that the term "successor in interest" as the term is used in Public Law 87-616, is limited to heirs at law in the sense of family relationships as enumerated in the laws of descent and distribution of property in intestacy and that the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES does not qualify as a successor in interest to an original payee under the statute. Therefore, this portion of the claim is also denied.

Accordingly, the relief sought by the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES in its capacity as *Parens Patriae* in behalf of its citizens who filed formal applications for benefits under Public Law 87-616, but who filed after the December 23, 1963 deadline, is hereby granted and these claims will be considered on the merits. All other relief is hereby denied.

Dated at Washington, D.C.
December 23, 1964.

Foreign Assistance Act, Amendments of 1963

Under the Amendments to the Foreign Assistance Act of 1961, as amended (Public Law 88-205, 77 Stat. 379), approved December 16, 1963, the President is authorized to suspend assistance to the government of any country which, on or after January 1, 1962, has nationalized or expropriated the property of United States nationals, taken steps to repudiate or annul contracts with United States nationals, or imposed discriminatory taxation or restrictive conditions having the effect of seizing ownership or control of property of United States nationals, and fails to take appropriate steps to discharge its obligations under international law. The Foreign Claims Settlement Commission is authorized, upon the request of the President, to evaluate expropriated property, determine the full value of any property nationalized, expropriated, or seized, or subjected to discriminatory actions, and to render an advisory report to the President within ninety days after such request. Unless authorized by the President, the Commission shall not publish its advisory report except to the citizen or entity owning such property.

These amendments extend the jurisdiction of the Commission from determination and adjudication of claims to functioning in an advisory capacity in the area of foreign nationalizations and seizures of American-owned property.

APPENDICES

Reorganization Plan No. 1 of 1954¹

Message From the President of the United States Transmitting Reorganization Plan No. 1 of 1954, Relating to the Establishment of the Foreign Claims Settlement Commission

April 29, 1954.—Referred to the Committee on Government Operations and ordered to be printed.

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1954, prepared in accordance with the Reorganization Act of 1949, as amended.

The reorganization plan establishes a new Government agency, the Foreign Claims Settlement Commission of the United States; transfers to that Commission the functions of the War Claims Commission and of the International Claims Commission of the United States; and abolishes the latter two Commissions.

The Foreign Claims Settlement Commission will be composed of three members appointed by the President by and with the advice and consent of the Senate. The President will designate one of the members as Chairman of the Commission. The Chairman will be responsible for the internal management of the affairs of the Commission. The reorganization plan contains provisions designed to assure smooth administration of functions during the period of transition to the new organization.

The War Claims Commission was created as a temporary agency by the War Claims Act of 1948. The Commission was made responsible for settling certain claims of former United States World War II prisoners of war, civilian internees captured or in hiding to avoid capture in the Philippines, Guam, Wake Island, and the Midway Islands, and certain religious organizations in the Philippines which had aided American forces during the war. In 1952, the Commission was assigned, additionally, the administration of claims of Philippine religious organizations which sustained losses of their educational, medical, and welfare facilities in the war, and of benefits to United States prisoners of war for inhumane treatment during internment by the enemy.

From its inception in 1949 to April 1, 1954, approximately 500,000 claims were filed with the War Claims Commission, and approximately \$134 million was paid to claimants. Approximately 96,000 remaining claims are in the process of settlement, and the Commission must complete action on them, together with such appeals as may be filed, by March 31, 1955.

The International Claims Commission was established within the Department of State by the International Claims Settlement Act of 1949. Its immediate function was to adjudicate claims covered by a settlement of \$17 million which was deposited with the Government of the United States by the Yugoslav Government primarily to compensate our nationals for losses sustained through nationalization of properties. The act also authorized the Commission to settle such claims as might be included later in any similar agreement between the United States and a foreign government. Subsequently, the Commission was assigned the administration of a \$400,000 settlement negotiated with the Government of Panama.

From its establishment in 1950 to April 1, 1954, the International Claims Commission has settled 531 claims out of a total of 1,622 filed. Of this total 1,555 claims were against Yugoslavia and 67 were against Panama. Under the act, settlement of the remaining Yugoslav claims must be completed by December 31, 1954.

The accompanying reorganization plan has substantial potential advantages. The Foreign Claims Settlement Commission will be able to administer any additional claims programs financed by funds derived from foreign

¹ 68 Stat. 1279; 19 F.R. 3985, July 1, 1954; H. Doc. No. 381, 83d Cong., 2d Sess. (1954).

governments without the delay which has often characterized the initiation of past programs. Moreover, the use of an existing agency will be more economical than the establishment of a new commission to administer a given type of foreign claims program. Consolidation of the affairs of the two present Commissions will also permit the retention and use of the best experience gained during the last several years in the field of claims settlement. The declining workload of current programs can be meshed with the rising workload of new programs with maximum efficiency and effectiveness.

A proposed new claims program now pending before the Senate would provide benefits similar to those paid to World War II victims under the War Claims Act for losses and internments resulting from hostilities in Korea. The executive branch of the Government has recommended approval of this program by the Congress. I now suggest that this program be assigned by law to the Foreign Claims Settlement Commission.

There should also be assigned to this new Commission the settlement of such of the claims programs as may be authorized from among those recommended by the War Claims Commission in its report made pursuant to section 8 of the War Claims Act. That report, posing many complex policy, legal, and administrative problems, is now being reviewed by executive agencies; and recommendations will soon be sent to the Congress.

By peace treaties and an international agreement, the United States has acquired the right to utilize certain external assets and settlement funds of several countries. A total of about \$39 million is available to indemnify claims of United States nationals against the Governments of Rumania, Hungary, Bulgaria, and Italy, arising out of war damage or confiscations in those countries. In addition, claims growing out of United States losses from default on obligations and nationalization of properties may be settled by awards from \$9 million realized from an agreement made in 1933 with the Soviet Union, known as the Litvinov assignment. Action by the Congress is necessary before these various funds may be assigned for settlement, and recommendations of the executive branch in this connection will be transmitted at an early date.

In addition to the reorganizations I have described, the reorganization plan transfers to the Foreign Claims Settlement Commission the functions of the Commissioner provided for in the joint resolution of August 4, 1939. These functions involved the receipt and administration of claims covered by the Litvinov assignment. The office of Commissioner, for which funds have never been appropriated and which has never been filled, is abolished.

The reorganization plan does not transfer the war claims fund or the Yugoslav claims fund from the Department of the Treasury, or divest the Secretary of the Treasury of any functions under the War Claims Act of 1948, as amended, or under the International Claims Settlement Act of 1949, as amended. It does not limit the responsibility of the Secretary of State with respect to the conduct of foreign affairs. The reorganizations contained in the reorganization plan will not prejudice any interest or potential interest of any claimant.

After investigation, I have found and hereby declare that each reorganization included in the accompanying reorganization plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended. I have also found and hereby declare that it is necessary to include in the accompanying reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of officers specified in section 1 of the plan. The rate of compensation fixed for each of these officers is that which I have found to prevail in respect of comparable officers in the executive branch of the Government.

The statutory citation for certain functions of the Secretary of State with respect to the International Claims Commission which are abolished by the reorganization plan, is the third and fourth sentences of section 3(c) of the International Claims Settlement Act of 1949 (64 Stat. 13), as amended.

It is at this time impracticable to specify the reductions of expenditures which it is probable will be brought about by the taking effect of the reorganizations contained in the plan.

Reorganization Plan No. 1 of 1954 provides a single agency for the orderly completion of present claims programs. In addition, it provides an effective organization for the settlement of future authorized claims programs by utilizing the experience gained by present claims agencies. It provides unified administrative direction of the functions concerned, and it simplifies the

organizational structure of the executive branch. I urge that the Congress allow the reorganization plan to become effective.

DWIGHT D. EISENHOWER.

The White House, April 29, 1954.

Reorganization Plan No. 1 of 1954

(Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 29, 1954, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended.)

Foreign Claims Settlement Commission of the United States

Section 1. *Establishment of Commission.*—There is hereby established the Foreign Claims Settlement Commission of the United States, hereinafter referred to as the Commission. The Commission shall be composed of three members, who shall each be appointed by the President by and with the advice and consent of the Senate, hold office during the pleasure of the President, and receive compensation at the rate of \$15,000 per annum. The President shall from time to time designate one of the members of the Commission as the Chairman of the Commission hereinafter referred to as the Chairman. Two members of the Commission shall constitute a quorum for the transaction of the business of the Commission.

Sec. 2. *Transfer of functions.*—(a) All functions of the War Claims Commission and of the members, officers, and employees thereof are hereby transferred to the Foreign Claims Settlement Commission of the United States.

(b) All functions of the International Claims Commission of the United States (hereinafter referred to as the International Claims Commission) and of the members, officers, and employees thereof are hereby transferred to the Foreign Claims Settlement Commission of the United States.

(c) The functions of the Secretary of State and of the Department of State with respect to the International Claims Commission and its affairs, exclusive of the functions of the said Secretary and Department under sections 3(c), 4(b), and 5, and the first sentence of section 8(d), of the International Claims Settlement Act of 1949 (64 Stat. 12), as amended, are hereby transferred to the Commission.

(d) The functions of the Commissioner provided for in the Joint Resolution approved August 4, 1939 (ch. 421, 53 Stat. 1199), together with the functions of the Secretary of State under section 2 thereof, are hereby transferred to the Commission.

Sec. 3. *Certain functions of Chairman.*—There are hereby vested in the Chairman all functions of the Commission with respect to the internal management of the affairs of the Commission, including but not limited to functions with respect to: (a) the appointment of personnel employed under the Commission, (b) the direction of employees of the Commission and the supervision of their official activities, (c) the distribution of business among employees and organizational units under the Commission, (d) the preparation of budget estimates, and (e) the use and expenditure of funds of the Commission available for expenses of administration.

Sec. 4. *Abolitions.*—(a) The War Claims Commission, provided for in the War Claims Act of 1948 (62 Stat. 1240), as amended, and the International Claims Commission, provided for in the International Claims Settlement Act of 1949, as amended, including the offices of the members of each of the said commissions, and the office of Commissioner provided for in the aforesaid Joint Resolution of August 4, 1939, are hereby abolished.

(b) The functions of the Secretary of State under the third and fourth sentences of section 3(c) of the International Claims Settlement Act of 1949, as amended, are hereby abolished.

Sec. 5. *Authorization to delegate.*—The Commission is hereby authorized to delegate any of its functions to one or more persons designated by the Commission from among the members of the Commission and the officers and employees serving under the Commission.

Sec. 6. *Transitional provisions.*—(a) Any person who is a member or acting member of the War Claims Commission or of the International Claims Commission immediately prior to the taking effect of the provisions of this reorganization plan may be designated by the President as an acting member

of the Foreign Claims Settlement Commission of the United States in respect of an office of member the initial appointment to which has not then been made under section 1 of this reorganization plan. Each such acting member of the said Foreign Claims Settlement Commission shall perform the duties and receive the compensation of member. Unless sooner terminated, the tenure of any acting member designated hereunder shall terminate when the office of member concerned is filled in pursuance of section 1 hereof, or 120 days after the effective date of this reorganization plan, whichever is earlier.

(b) The Chairman shall make such provisions as may be necessary with respect to winding up any affairs of the agencies abolished by the provisions of this reorganization plan not otherwise provided for herein.

(c) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available, in connection with the functions transferred by section 2 of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Commission at such time or times as the said Director shall direct.

(d) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (c) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

Sec. 7. *Effective date.*—The provisions of this reorganization plan shall take effect on the date determined under section 6(a) of the Reorganization Act of 1949, as amended, or the first day of July 1954, whichever is later.

War Claims Act of 1948, as Amended

62 Stat. 1240 (1948)

50 U.S.C. App. §§ 2001–2016 (1964)

Public Law 896—80th Congress

Chapter 826—2d Session, H.R. 4044

July 3, 1948

An Act

To amend the Trading with the Enemy Act, as amended; to create a commission to make an inquiry and report with respect to war claims; and to provide for relief for internees in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Short Title

Section 1. This Act may be cited as the “War Claims Act of 1948”.

War Claims Commission¹

Sec. 2. (a)² The Foreign Claims Settlement Commission of the United States (hereinafter referred to as the “Commission”) may, in accordance with the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such officers, attorneys, and employees, and may make such expenditures, as may be necessary to carry out its functions. Officers and employees of any other department or agency of the Government may, with the consent of the head of such department or agency, be assigned to assist the Commission in carrying out its functions. The Commission may, with the consent of the head of any other department or agency of the Government, utilize the facilities and services of such department or agency in carrying out the functions of the Commission.

(b) The Commission may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. The limit of time within which claims may be filed with the Commission shall in no event be later than March 31, 1952.³ The Commission shall take immediate action to advise all persons entitled to file claims under the provisions of this Act administered by the Commission of their rights under such provisions, and to assist them in the preparation and filing of their claims.⁴

¹ The War Claims Commission, established by section 2(a) of the War Claims Act of 1948, as amended, was abolished, effective July 1, 1954, by Reorganization Plan No. 1 of 1954 (68 Stat. 1279). Its functions were transferred to the Foreign Claims Settlement Commission of the United States which was established in section 1 of that Plan.

² Public Law 615, 83d Cong. (68 Stat. 759), repealed original section 2 (a), redesignated former subsections (b), (c), and (d) as subsections (a), (b), and (c) respectively, and struck out “Commission” in new section 2(a) inserting in lieu: “The Foreign Claims Settlement Commission of the United States (hereinafter referred to as the ‘Commission’)”. Prior to repeal, section 2(a) provided:

“Sec. 2(a) There is hereby established a commission to be known as the War Claims Commission (hereinafter referred to as the ‘Commission’) and to be composed of three persons to be appointed by the President, by and with the advice and consent of the Senate. At least two of the members of the Commission shall be persons who have been admitted to the bar of the highest court of any State, Territory, or the District of Columbia. The members of the Commission shall receive compensation at the rate of \$12,000 a year. The terms of office of the members of the Commission shall expire at the time fixed in subsection (d) for the winding up of the affairs of the Commission.”

(c) ⁵ (1) For the purpose of any hearing, examination, or investigation, under this Act, the Commission and those employees designated by the Commission shall have the power to issue subpoenas requiring persons to appear and testify or to appear and produce documents, or both, at any designated place where such hearing, examination, or investigation is being held. The Commission or any employee so designated shall, upon application of a claimant, issue to such claimant subpoenas requiring the attendance and testimony of witnesses or the production of documents, or both, required by such claimant in hearings upon his claim: *Provided*, That the claimant making such application pay the witness fees and mileage of any witness or witnesses subpoenaed upon his request. The production of a person's documents at any place other than his place of business shall not be required, however, in any case in which, prior to the return date specified in the subpoena with respect thereto, such person either has furnished the issuer of the subpoena with a copy of such documents (certified by such person under oath to be a true and correct copy) or has entered into a stipulation with the issuer of the subpoena as to the information contained in such documents.

(2) The Commission may, in case of a failure or refusal on the part of any person to comply with any such subpoena, invoke the aid of any United States district court within the jurisdiction of which the hearing, examination, or investigation is being conducted, or such person resides or transacts business. Such court may issue an order requiring such person to appear at the designated place of hearing, examination, or investigation, there to give or produce testimony or documentary evidence concerning the matter in question. Any failure to obey such order of the court shall be punishable by such court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person resides or transacts business or wherever such person may be found.

(3) Witnesses subpoenaed under this subsection (d) ⁶ shall be paid the same fees and mileage that are allowed and paid witnesses in the United States district courts.

(4) Any member of the Commission, and any employee of the Commission authorized by the Commission to do so, may administer to, or take from, any person an oath, affirmation, or affidavit when such action is necessary or appropriate in the performance of the functions or activities of the Commission.

Jurisdiction of Commission

Sec. 3. The Commission shall have jurisdiction to receive and adjudicate according to law claims as hereinafter provided.

Employees of Contractors

Sec. 4. (a) The Federal Security Administrator ⁷ is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any person specified in section 101(a) of the Act entitled "An Act to provide benefits for the injury, disability, death, or enemy detention of employees of contractors with the United States, and for other purposes", approved December 2, 1942, as amended, or by the legal representative of

Subsection (d) of section 2 was subsequently redesignated (e) by Public Law 696, 81st Cong. (64 Stat. 449) and as so redesignated it was repealed by Public Law 615, 83d Cong. (68 Stat. 759). Prior to repeal subsection (e) of section 2, (formerly subsection (d)), provided: "(e) The Commission shall wind up its affairs at the earliest practicable time after the expiration of the time for filing claims, but in no event later than 3 years after the expiration of such time." Public Law 359, 81st Cong. (63 Stat. 880, section 6 (a)) increased salaries of former War Claims Commissioners from \$12,000 to \$14,000 per annum.

⁵ This date terminated the filing period for claims filed only under sections 5 (a) through (e) and 6 (a) through (c) in the original War Claims Act of 1948. The filing period for claims under sections 4 (a) and 5 (f) are governed by the provisions of the Act of December 2, 1942, relating to injury, disability and death claims for employees of contractors with the United States. Filing periods for all other claims are governed by specific provisions in the amendatory Acts by which such claims are authorized.

⁴ Public Law 75, 81st Cong. (68 Stat. 112), substituted date of March 1, 1951 in this subsection. Public Law 16, 82d Cong. (65 Stat. 28), substituted date of March 31, 1952, as well as additional mandate relating to information and assistance to claimants.

⁵ Originally subsection (d). Public Law 696, 81st Cong. (64 Stat. 449), subsequently redesignated original subsection (d) as (c) and added new subsection (d) which, in turn, was redesignated as subsection (e) by Public Law 615, 83d Cong. (68 Stat. 759).

⁶ Subsection (d) was redesignated (c). See footnote 5. Read as, "under this subsection (c)".

⁷ The Bureau of Employee Compensation which administers subsections (a), (b), (2) and (c) of section 4, and subsection (f) of section 5 of the War Claims Act of 1948, as amended, was transferred from the Federal Security Agency to the Department of Labor under Reorganization Plan No. 19 of 1950 (64 Stat. 1271, 15 F.R. 3178), effective May 13, 1950. For "Federal Security Administrator" read "Secretary of Labor."

any such person who may have died, for the amount by which (1) the total sum which would have been payable to such person by his employer (not including any payments for overtime), if such person's contract of employment had been in effect and he had been paid under it for the entire period during which he was entitled to receive benefits under section 101(b) of such Act, exceeds (2) the entire amount creditable to such person's account for such period under the provisions of such section plus any amounts paid to such person by such employer for such period or recovered by such person in any legal action against such employer based upon such person's right against such employer for such period under the contract of employment, including payments in settlement of the liability of the employer arising under or out of such contract. No claim shall be allowed to any person under the provisions of this section unless such person executes a full release to the employer and to the United States in respect to the liability of the employer arising under or out of the contract of employment, except liability for workmen's compensation benefits under the Act of August 16, 1941, as amended (42 U.S.C. 1651 and the following), or detention or other benefits paid under the Act of December 2, 1942, as amended (42 U.S.C. 1751 and the following). Any claim allowed under the provisions of this section shall be certified by the Administrator to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

(b) (1) The Secretary of State is hereby authorized and directed to cancel any obligation to the United States of any person specified in section 101(a) of such Act of December 2, 1942, to pay any sum which may have been advanced to or on behalf of any such person by the Department of State for the purpose of paying the costs of food and medical services furnished to such person during his period of internment by the Imperial Japanese Government or for the purpose of paying transportation or other expenses of repatriation.

(2) The Federal Security Administrator is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any person specified in section 101(a) of such Act of December 2, 1942, for the repayment of any sum which may have been paid by such person to the Department of State in settlement of any obligation of the type referred to in paragraph (1) of this subsection. Any claim allowed under the provisions of this paragraph shall be certified by the Administrator to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

(c) Section 102(a) of the Act entitled "An Act to provide benefits for the injury, disability, death, or enemy detention of employees of contractors with the United States, and for other purposes," approved December 2, 1942, as amended, is hereby amended by striking out the proviso in such subsection and by substituting the following: "*Provided*, That the total compensation payable under this title for injury or death shall in no event exceed the limitations upon compensation as fixed in section 14(m) of such Act as such section may from time to time be amended except that the total compensation shall not be less than that provided for in the original enactment of this Act: *Provided further*, That any amendment to such Act, the effect of which is to increase the amount of benefits payable for injury or death, shall be applied in the administration of this section as if the amendment had been in effect at the time of the particular injury or death and the compensation (except funeral and burial expenses) in any case previously determined shall be adjusted accordingly in respect to the beneficiary entitled thereto under the Act."

Internees

Sec. 5.⁸ (a) As used in subsections (b) and (f) of⁹ this section, the term "civilian American citizen" means any person who, being then a citizen of the United States, was captured by the Imperial Japanese Government on or after December 7, 1941, at Midway, Guam, Wake Island, the Philippine Islands, or any Territory or possession of the United States

⁸ Public Law 744, 83d Cong. (68 Stat. 1033), in amending section 5, provided:

"Sec. 101 (e) (1) Individuals entitled to benefits under subsections (b), (c), or (d) of section 5 of the War Claims Act of 1948, as amended, solely by reason of the Amendments made by this Act, must file claim therefor within one year after the date of enactment of this Act.

"(2) The time limitations applicable to the filing of claims for benefits extended and made applicable to any individual by subsection (f) of such section 5 shall not begin to run until the date of enactment of this Act with respect to any individual who is entitled to such benefits solely

attacked or invaded by such government, or while in transit to or from any such place, or who went into hiding at any such place in order to avoid capture or internment by such government; except (1) a person who at any time voluntarily gave aid to, collaborated with, or in any manner served such government, or (2) a person who at the time of his capture or entrance into hiding was a regularly appointed, enrolled, enlisted, or inducted member of any military or naval forces.¹⁰

(b) The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by, or on behalf of, any civilian American citizen for detention benefits for any period of time subsequent to December 6, 1941, during which he was held by the Imperial Japanese Government as a prisoner, internee, hostage, or in any other capacity, or remained in hiding to avoid being captured or interned by such Imperial Japanese Government.

(c) The detention benefit allowed to any person under the provisions of subsection (b) shall be at the rate of \$60 for each calendar month during which such person was at least eighteen years of age and at the rate of \$25 per month for each calendar month during which such person was less than eighteen years of age.

(d)¹¹ The detention benefits allowed under subsection (b) shall be allowed to the person entitled thereto, or, in the event of his death, only to the following persons:

- (1) Widow or husband, if there is no child or children of the deceased;
- (2) Widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children in equal shares;
- (3) Child or children of the deceased (in equal shares) if there is no widow or husband; and
- (4) Parents (in equal shares) if there is no husband, or child.

(e) Any claim allowed by the Commission under this section (except under subsection (g))¹² shall be certified to the Secretary of the Treasury for payment out of the war claims funds¹³ established by section 13 of this Act, and shall be payable by the Secretary of the Treasury to the person entitled thereto; except that where the person entitled to payment is under any legal disability, any part of the amount payable may, in the discretion of the Commission, be paid, for the use of the claimant, to the natural or legal guardian, committee, conservator, or curator of the claimant, or, if there is no such guardian, committee, conservator, or curator, then the Commission may, in its discretion, make payment to any other person, including the spouse of such claimant, whom the Commission may determine is vested with the care of the claimant or his estate for the use and benefit of such claimant or estate; and if such person is a minor, any part of the amount payable may, in the discretion of the Commission, be paid to such minor.¹⁴

by reason of the amendments made by this Act. This paragraph shall not be construed to affect the right of any individual to receive such benefits with respect to any period prior to the date of enactment of this Act.

"Sec. 102. (b) The amendments made by this section shall not apply with respect to benefits paid prior to the date of enactment of this Act.

"(c) Individuals entitled to benefits solely by reason of the amendments made by this section must file claim therefor within one year after the date of enactment of this Act.

"Sec. 105. Within two years after the date of enactment of this Act, the Foreign Claims Settlement Commission of the United States shall wind up its affairs in connection with the settlements of all claims for benefits authorized by the amendments made by this Act."

⁹ Public Law 615, 83d Cong. (68 Stat. 759) inserted after the words, "As used in" the following: "subsections (b) and (f) of".

¹⁰ Public Law 744, 83d Cong., section 101(a) (68 Stat. 1033) amended the definition of the term "civilian American citizen" in section 5(a) by repealing provisions therein which excluded certain classes of persons from such definition as follows:

"(A) a person within the purview of the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes,' approved September 7, 1916, as amended, and as extended; or (B) a person within the purview of the Act entitled 'An Act to provide benefits for the injury, disability, death, or enemy detention of employees of contractors with the United States, and for other purposes,' approved December 2, 1942, as amended; or (C) a person within the purview of the Missing Persons Act of March 7, 1942 (56 Stat. 143), as amended; or (D)".

¹¹ Public Law 744, 83d Cong. (68 Stat. 1033) struck out "dependent" preceding "husband" in sections 5(d) (1), (2), and (3), and added 5(d) (4).

¹² Public Law 615, 83d Cong. (68 Stat. 759) inserted after "under this section" the words "except under subsection (g)".

¹³ So in original. There is only one War Claims Fund.

¹⁴ Public Law 304, 82d Cong. (66 Stat. 49), substituted the above language of subsection (e) of section 5. Prior to amendment subsection (e) provided: "(e) Any claim allowed under the provisions of subsection (b) shall be certified to the Secretary of the Treasury for payment

(f) (1) Except as otherwise provided in this subsection, the provisions of titles I and II of the Act entitled "An Act to provide benefits for the injury, disability, death, or enemy detention of employees of contractors with the United States, and for other purposes", approved December 2, 1942, as amended, are extended and shall apply with respect to the injury, disability, or death resulting from injury of a civilian American citizen occurring while he was held by or in hiding from the Imperial Japanese Government, to the same extent as if such civilian American citizen were an employee within the purview of such Act of December 2, 1942, as amended.

(2) For the purpose of determining the benefits extended and made applicable by paragraph (1)—

(A) the average weekly wage of any such civilian American citizen, whether employed, self-employed, or not employed, shall be deemed to have been \$37.50;

(B) the provisions of such Act shall be applicable whether or not any such civilian American citizen was employed;

(C) notice of injury or death shall not be required; and limitation provisions with respect to the filing of claims for injury, disability, or death shall not begin to run until the date of enactment of this section; and

(D) the monthly compensation in cases involving partial disability shall be determined by the percentage the degree of partial disability bears to total disability and shall not be determined with respect to the extent of loss of wage earning capacity.

(3) The following provisions of such Act of December 2, 1942, as amended, shall not apply in the case of such civilian American citizens: The last sentence of section 101(a), section 101(b), section 101(d), section 104, and section 105.¹⁵

(4) Rights or benefits which, under this subsection, are to be determined with reference to other provisions of law shall be determined with reference to such provisions of law as in force on January 3, 1948.

(5) The money benefit for disability or death shall be paid only to the person entitled thereto, or to his legal or natural guardian if he has one, and shall not upon death of the person so entitled survive for the benefit of his estate or any other person.

(6) The benefit of a minor or of an incompetent person who has no natural or legal guardian may, in the discretion of the Federal Security Administrator, be paid, in whole or in such part as he may determine for and on behalf of such minor or incompetent directly to the person or institution caring for, supporting, or having custody of such minor or incompetent.

(7) No person, except a widow or a child, shall be entitled to benefits for disability with respect to himself, and to death benefits on account of the death of another.

(8) If a civilian American citizen or his dependent receives or has received from the United States any payments on account of the same injury or death, or from his employer, in the form of wages, or payments in lieu of wages, or in any form of support or compensation (including workmen's compensation) in respect to the same objects, the benefits under this section shall be diminished by the amount of such payments in the following manner: (A) Benefits on account of injury or disability shall be reduced by the amount of payments to the injured person on account of the same injury or disability; and (B) benefits on account of death shall be reduced by the amount of payments to the dependents of the deceased civilian American citizen on account of the same death.

(9) This subsection shall take effect as of December 7, 1941, and the right of individuals to benefits shall be held to have begun to accrue as though this subsection had been in effect as of such date.

(10) No benefits provided by this subsection for injury, disability, or death shall accrue to any person who, without regard to this subsection, is entitled to or has received benefits for the same injury, disability, or death under such Act of December 2, 1942, as amended.¹⁶

out of the War Claims Fund established by section 13 of this Act, and shall be payable by the Secretary of the Treasury to the person entitled thereto or to his legal or natural guardian if he has one."

¹⁵ Public Law 744, 83d Cong., section 101(b) (68 Stat. 1033). Technical Amendment adding reference to sections 101(a) and 101(d) of the Act of December 2, 1942, thus insuring payment of injury, disability, death and medical care benefits of persons within the definition of "civilian American citizen" in section 5(a) of the War Claims Act of 1948, as amended.

¹⁶ Public Law 744, 83d Cong. (68 Stat. 1033), added paragraph (10) to subsection (f) of section 5.

(11) No benefits provided by this subsection shall accrue to any person to whom benefits have been paid, or are payable, under the Federal Employees' Compensation Act, or any extension thereof, by reason of disability or death of an employee of the United States suffered after capture, detention, or other restraint by an enemy of the United States, when such disability or death is deemed, in the administration of the Federal Employees' Compensation Act, to have resulted from injury occurring while in the performance of duty, under subsection (b) of section 5 of the Act entitled "An Act to amend the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes', as amended", approved July 28, 1945, as amended.¹⁷

(g) ¹⁸ (1) As used in this subsection, the term "civilian American citizens" ¹⁹ means any person who, being then a citizen of the United States, was captured in Korea on or after June 25, 1950, by any hostile force with which the Armed Forces of the United States were actually engaged in armed conflict subsequent to such date and prior to the date of enactment of this subsection, or who went into hiding in Korea in order to avoid capture or internment by any such hostile force; except (A) a person who at any time voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any such hostile force, or (B) a regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States.

(2) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim filed by, or on behalf of, any civilian American citizen for detention benefits for any period of time subsequent to June 25, 1950, during which he was held by any such hostile force as a prisoner, internee, hostage, or in any other capacity, or remained in hiding to avoid being captured or interned by any such hostile force.

(3) The detention benefit allowed to any person under the provisions of paragraph (2) of this subsection shall be at the rate of \$60 for each calendar month during which such person was at least eighteen years of age and at the rate of \$25 per month for each calendar month during which such person was less than eighteen years of age.

(4) The detention benefits allowed under paragraph (2) of this subsection shall be allowed to the person entitled thereto, or, in the event of his death, only to the following persons:

(A) widow or husband if there is no child or children of the deceased;

(B) widow or dependent husband and child or children of the deceased, one-half to the widow or dependent husband and the other half to the child or children in equal shares;

(C) child or children of the deceased (in equal shares) if there is no widow or dependent husband.

(5) Any claim allowed by the Commission under this subsection shall be certified to the Secretary of the Treasury for payment out of funds appropriated pursuant to this subsection, and shall be paid by the Secretary of the Treasury to the person entitled thereto, except that where any person entitled to payment under this subsection is under any legal disability, payment may be made in accordance with the provisions of subsection (e) of this section.

(6) Each claim filed under this subsection must be filed not later than one year from whichever of the following dates last occurs:

(A) The date of enactment of this subsection;

(B) The date the civilian American citizen by whom the claim is filed returned to the jurisdiction of the United States; or

(C) The date upon which the Commission, at the request of a potentially eligible survivor, makes a determination that the civilian American citizen has actually died or may be presumed to be dead, in the case of any civilian American citizen who has not returned to the jurisdiction of the United States.

The Commission shall complete its determinations with respect to each

¹⁷ Public Law 744, 82d Cong. (68 Stat. 1032), added paragraph (11) to subsection (f) of section 5.

¹⁸ Public Law 615, 83d Cong. (68 Stat. 759), added section 5(g).

¹⁹ So in original. Should read, "civilian American citizen".

claim filed under this subsection at the earliest practicable date, but in no event later than one year after the date on which such claim was filed.

(7) (A) There are hereby authorized to be appropriated such amounts as may be necessary to carry out the purposes of this subsection, including necessary administrative expenses.

(B) The Commission shall determine, from time to time, the share of its administrative expenses attributable to the performance of its functions under this subsection and make the appropriate adjustments in its accounts, and determinations and adjustments made pursuant to this subparagraph shall be final and conclusive.

Prisoners of War

Sec. 6(a) As used in subsection (b) of ²⁰ this section, the term "prisoner of war" means any regularly appointed, enrolled, enlisted, or inducted member of the military or naval forces of the United States who was held as a prisoner of war for any period of time subsequent to December 7, 1941, by any government of any nation with which the United States has been at war subsequent to such date.

(b) The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any prisoner of war for compensation for the violation by the enemy government by which he was held as a prisoner of war, or its agents, of its obligation to furnish him the quantity or quality of food to which he was entitled as a prisoner of war under the terms of the Geneva Convention of July 27, 1929. The compensation allowed to any prisoner of war under the provisions of this subsection shall be at the rate of \$1 for each day he was held as a prisoner of war on which the enemy government or its agents failed to furnish him such quantity or quality of food. Any claim allowed under the provisions of this subsection shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

(c) Claims pursuant to subsection (b) shall be paid to the person entitled thereto, and shall in case of death of the persons who are entitled be payable only to or for the benefit of the following persons: ²¹

(1) Widow or husband if there is no child or children of the deceased;

(2) Widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares;

(3) Child or children of the deceased (in equal shares) if there is no widow or husband; and

(4) Parents ²² (in equal shares) if there is no widow, husband, or child.

(d) ²³ (1) As used in this subsection the term "prisoner of war" means any regularly appointed, enrolled, enlisted, or inducted member of the military or naval forces of the United States, who was held a prisoner of war for any period of time subsequent to December 7, 1941, by any government of any nation with which the United States has been at war subsequent to such date.

(2) The Commission is authorized to receive, adjudicate according to law,

²⁰ Public Law 303, 82d Cong. (66 Stat. 47) inserted after "As used in", the words "subsection (b) of".

²¹ Public Law 304, 82d Cong. (66 Stat. 49), amended section 6(c) by striking out the words "or to his legal or natural guardian if he has one,".

²² Public Law 744, 83d Cong. (68 Stat. 1033), amended sections 6(c)(1), 6(c)(2) and 6(c)(3), by striking out the word "dependent" wherever it occurred.

Public Law 866, 81st Cong. (64 Stat. 1090), amended section 6(c)(4) to read: "(4) Parents (in equal shares) if there is no widow, husband, or child."

²³ Public Law 303, 82d Cong. (66 Stat. 47), approved April 9, 1952, added subsections (d) and (e) to section 6 of the War Claims Act of 1948, as amended, and in so doing also provided as follows: "SEC. 3. Claims for compensation under subsection (d) of section 6 of the War Claims Act of 1948, as amended, must be filed with the War Claims Commission within one year after the date of the enactment of this Act."

Public Law 359, 83d Cong. (68 Stat. 97), amended this provision of Public Law 303, by striking out "within one year after the date of enactment of this Act", and inserting in lieu thereof "on or before August 1, 1954". Public Law 359, 83d Cong., also provided as follows: "SEC. 3. The amendment made by this Act shall take effect as of April 9, 1953."

In addition, Public Law 303, 82d Cong. (66 Stat. 47), provided as follows: "SEC. 4. Nothing in this Act, or in the amendments made by this Act to the War Claims Act of 1948, as amended, shall operate to extend the life of the War Claims Commission for any period of time."

Public Law 359, 83d Cong. (68 Stat. 97), similarly provided as follows: "SEC. 2. The amendment made by this Act shall not be construed to extend the life of the War Claims Commission for any period of time."

and to provide for the payment of any claim filed by any prisoner of war for compensation—

(A) for the violation by the enemy government by which he was held as a prisoner of war, or its agents, of such government's obligations under title III, section III, of the Geneva Convention of July 27, 1929, relating to labor of prisoners of war; or

(B) for inhumane treatment by the enemy government by which he was held, or its agents. The term "inhumane treatment" as used herein shall include, but not be limited to, violation by such enemy government, or its agents, of one or more of the provisions of articles 2, 3, 7, 10, 12, 13, 21, 22, 54, 56, or 57, of the Geneva Convention of July 27, 1929.

(3) Compensation shall be allowed to any prisoner of war under this subsection at the rate of \$1.50 per day for each day he was held as a prisoner of war on which he alleges and proves in a manner acceptable to the Commission—

(A) the violation by such enemy government or its agents of the provisions of title III, section III of the Geneva Convention of July 27, 1929; or

(B) any inhumane treatment as defined herein.

Any claim allowed under the provisions of this subsection shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act. In no event shall the compensation allowed to any prisoner of war under this subsection exceed the sum of \$1.50 with respect to any one day.

(4) Claims pursuant to subsection (d) (2) shall be paid to the person entitled thereto, or to his legal or natural guardian if he has one, and shall, in case of death of the persons who are entitled be payable only to or for the benefit of the following persons:

(A) ²⁴ widow or husband if there is no child or children of the deceased;

(B) widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares;

(C) child or children of the deceased (in equal shares) if there is no widow or husband; and

(D) parents (in equal shares) if there is no widow, husband, or child.

(e) ²⁵ (1) As used in this subsection the term "prisoner of war" means any regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States who was held as a prisoner of war for any period of time subsequent to June 25, 1950, by any hostile force with which the Armed Forces of the United States were actually engaged in armed conflict subsequent to such date and prior to the date of enactment of this subsection, except any such member who, at any time, voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any such hostile force.

(2) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim filed by any prisoner of war for compensation for the failure of the hostile force by which he was held as a prisoner of war, or its agents, to furnish him the quantity or quality of food prescribed for prisoners of war under the terms of the Geneva Convention of July 27, 1929. The compensation allowed to any prisoner of war under the provisions of this paragraph shall be at the rate of \$1 for each day on which he was held as a prisoner of war and on which such hostile force, or its agents, failed to furnish him such quantity or quality of food.

(3) The Commission is authorized to receive and to determine, according to law, the amount and validity and provide for the payment of any claim filed by any prisoner of war for compensation—

(A) for the failure of the hostile force by which he was held as a prisoner of war, or its agents, to meet the conditions and requirements prescribed under title III, section III, of the Geneva Convention of July 27, 1929, relating to labor of prisoners of war; or

(B) for inhumane treatment by the hostile force by which he was held, or its agents. The term "inhumane treatment" as used herein shall include, but not be limited to, failure of such hostile force, or its agents, to meet the

²⁴ Public Law 744, 83d Cong. (68 Stat. 1033), struck out "dependent" preceding "husband" in subparagraph (A), (B), (C), and (D) of section 6(d) (4).

²⁵ Public Law 615, 83d Cong. (68 Stat. 759), added subsection (e) to section 6.

conditions and requirements of one or more of the provisions of articles 2, 3, 7, 10, 12, 13, 21, 22, 54, 56, or 57 of the Geneva Convention of July 27, 1929. Compensation shall be allowed to any prisoner of war under this paragraph at the rate of \$1.50 per day for each day on which he was held as a prisoner of war and with respect to which he alleges and proves in a manner acceptable to the Commission the failure to meet the conditions and requirements described in subparagraph (A) or the inhumane treatment described in subparagraph (B). In no event shall the compensation allowed to any prisoner of war under this paragraph exceed the sum of \$1.50 with respect to any one day.

(4) Any claim allowed by the Commission under this subsection shall be certified to the Secretary of the Treasury for payment out of funds appropriated pursuant to this subsection and shall be paid by the Secretary of the Treasury to the person entitled thereto, and shall, in case of death or determination of death of the persons who are entitled, be paid only to or for the benefit of the persons specified, and in the order established, by paragraph (4) of subsection (d) of this section.

(5) Each claim filed under this subsection must be filed not later than one year from whichever of the following dates last occurs:

(A) The date of enactment of this subsection;

(B) The date the prisoner of war by whom the claim is filed returned to the jurisdiction of the Armed Forces of the United States; or

(C) The date upon which the Department of Defense makes a determination that the prisoner of war has actually died or is presumed to be dead, in the case of any prisoner of war who has not returned to the jurisdiction of the Armed Forces of the United States.

The Commission shall complete its determinations with respect to each claim filed under this subsection at the earliest practicable date, but in no event later than one year after the date on which such claim was filed.

(6) Any claim allowed under the provisions of this subsection shall be paid from funds appropriated pursuant to paragraph (7) of this subsection.

(7) (A) There are hereby authorized to be appropriated such amounts as may be necessary to carry out the purposes of this subsection, including necessary administrative expenses.

(B) The Commission shall determine, from time to time, the share of its administrative expenses attributable to the performance of its functions under this subsection and make the appropriate adjustments in its accounts, and determinations and adjustments made pursuant to this subparagraph shall be final and conclusive.

(f) ²⁶ Where any person entitled to payment under this section is under any legal disability, payment may be made in accordance with the provisions of subsection (e) of section 5.

Religious Organizations

Sec. 7. (a) ²⁷ The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any religious organization functioning in the Philippine Islands and affiliated with a religious organization in the United States, or by the personnel of any such Philippine organization, for reimbursement of expenditures incurred, or for payment of the fair value of supplies used, by such organization or such personnel for the purpose of furnishing shelter, food, clothing, hospitalization, medicines and medical services, and other relief in the Philippines to members of the armed forces of the United States or to civilian American citizens (as defined in section 5) at any time subsequent to December 6, 1941, and before August 15, 1945. Any claim allowed under the provisions of this section shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

(b) That any such religious organization or its personnel functioning in the Philippines and affiliated with a religious organization in the United States, which furnished relief in the Philippines to members of the Armed Forces of the United States or to civilian American citizens in accordance with the provisions of subsection (a) shall be compensated from the War

²⁶ Public Law 615, 83d Cong. (68 Stat. 759), provided: "SEC. 2. (a) The subsection (d) of section 6 of the War Claims Act of 1948, as amended (50 App. U.S.C., sec. 2005), which was added to such section by Public Law 304, 82d Cong., is hereby redesignated as subsection (f)."

²⁷ Public Law 303, 82d Cong. (66 Stat. 47), redesignated section 7 as 7(a) and added subsections (b), (c), (d), (e), (f), and (g) to section 7.

Claims Fund, as hereinafter provided, for the loss and damage sustained as a consequence of the war to its schools, colleges, universities, scientific observatories, hospitals, dispensaries, orphanages, and other property or facilities connected with its educational, medical, or welfare work.

(c) That any such affiliated organization furnishing relief which possessed any interest in, and whose personnel of American citizens substantially composed the administrative staff of, any hospital whose prewar facilities and capacity have not been restored shall be compensated in an amount sufficient to enable such organization to replace the hospital's facilities and capacity equal to that which existed at the time of the outbreak of the war, irrespective of what disposition was made subsequently of the land, buildings, and contents.

(d) That claims filed pursuant to subsection (b) shall be determined and paid upon the basis of postwar cost of replacement which shall be ascertained by the War Claims Commission. In making such determinations the Commission shall utilize but not be limited to the factual information and evidence contained in the records of the Philippine War Damage Commission; the technical advice of experts in the field; the substantiating evidence submitted by the claimants; and any other technical and legal means by which fair and equitable postwar replacement costs shall be determined.

(e) The Commission is hereby authorized and directed to proceed at once with the necessary investigation, study, and establishment of procedures in order to determine the replacement costs of the claims to be filed under subsections (b) and (c), using as a basis for beginning such investigation and study the evidence contained in the claims of those religious organizations or their personnel which have already filed and are eligible to be paid under the terms of subsection (a) of this section.

(f) All claims under subsections (b) and (c) must be filed on or before October 1, 1952; and not later than March 31, 1953, the Commission shall adjudicate according to law and provide for the payment of any claim filed pursuant to this section. In any case in which any money is payable as a result of subsections (b) and (c) to a religious organization or its personnel functioning in the Philippines, such money shall be paid upon request of such organization to its affiliate in the United States: *Provided*, That all money thus paid to such affiliated religious organization in the United States shall be used by such affiliate for the purpose of restoring the educational, medical, and welfare facilities described in subsections (b) and (c) and located in the Philippines.

(g) The Commission shall expedite the payments under this section without reducing payment of claims of American civilian internees and prisoners of war filed before March 31, 1953, pursuant to the provisions of sections 5 and 6 of this Act.

(h) ²⁸ (1) Any religious organization functioning in the Philippines and of the same denomination as a religious organization functioning in the United States which furnished relief (as described, and during the period designated, in subsection (a) of this section) in the Philippines to members of the Armed Forces of the United States or to civilian American citizens shall be compensated from the War Claims Fund (A) for expenditures incurred, or for payment of the fair value of supplies used by such organization, for the purpose of furnishing such relief and (B) for loss and damage sustained as a consequence of the war to its schools, colleges, universities, scientific observatories, hospitals, dispensaries, orphanages, and other property or facilities connected with its educational, medical, or welfare work. No payments shall be made to any organization under this subsection if such organization has received an award under subsection (a) or (b) of this section, and no payments shall be made to any organization pursuant to clause (B) of this paragraph unless such organization has received an award for war damages from the Philippine War Damage Commission under the provisions of the Philippine Rehabilitation Act of 1946, as amended.

(2) The Commission is authorized to receive, determine according to law, and provide for the payment of claims filed under this subsection. Each claim allowed by the Commission under this subsection shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund. All payments under this subsection shall be made to an organization or individual in the United States designated by the claimant, and, in the case of claim under clause (B) of paragraph (1) of this subsection such pay-

²⁸ Public Law 297, 84th Cong., approved August 6, 1956 (70 Stat. 1063), amended section 7 of the War Claims Act of 1948, as amended, by adding subsection "(h)".

ments shall be used for the purpose of restoring the educational, medical, and welfare facilities described in such clause.

(3) Claims for benefits under this subsection must be filed within six months after the date of enactment of this subsection. The Commission shall complete its determination with respect to each claim filed under this subsection at the earliest practicable date, but in no event later than one year after the date on which such claim was filed.

(4) Claims filed pursuant to clause (B) of paragraph (1) of this subsection shall be determined and paid upon the basis of postwar cost of replacement for the twelve-month period ending October 1, 1952, as ascertained by the Commission.

Report With Respect to Personal Injury and Property Claims

Sec. 8. (a) The Commission shall inquire into and report to the President, for submission of such report to the Congress on or before March 31, 1950²⁹ with respect to war claims arising out of World War II, other than claims which may be received and adjudicated under the preceding sections of this Act, and shall present in such report its findings on—

(1) the estimated number and amount of such claims, classified by types and categories; and

(2) the extent to which such claims have been or may be satisfied under international agreements or domestic or foreign laws.

(b) The report of the Commission shall contain recommendations with respect to—

(1) categories and types of claims, if any, which should be received and considered and the legal and equitable bases therefor;

(2) the administrative method by which such claims should be considered, and any priorities or limitations which should be applicable; and

(3) any limitations which should be applied to the allowance and payment of fees in connection with such claims.

(c) The Commission shall include in such report—

(1) such other recommendations as it deems appropriate; and

(2) such proposals for legislation as it deems appropriate for carrying out the recommendations made in such report.

(d) Such report, with accompanying evidence, shall be printed as a public document when received by the Congress.

(e) Nothing in this section shall be deemed to imply that the Congress will enact legislation—

(1) adopting any recommendations made under this section with respect to the consideration or payment of any type of claim; or

(2) making any moneys, including moneys remaining in the war claims fund after the making of payments from such fund provided for by this Act, available for the payment of such claims.

Reports to Congress

Sec. 9. Not later than six months after its organization, and every six months thereafter, the Commission shall make a report to the Congress concerning its operations under this Act.

Remuneration for Services in Connection With Claims

Sec. 10. No remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim filed with the administering agency under this Act shall exceed 10 per centum (or such lesser per centum as may be fixed by the administering agency with respect to any class of claims) of the amount allowed by the administering agency on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, pays or offers to pay, or promises, to pay, or receives, on account of services rendered or to be rendered in connection with any such claim, any remuneration in excess of the maximum permitted by this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both, and,

²⁹ Public Law 75, 81st Cong. (63 Stat. 112) struck out "March 31, 1949" and inserted "March 31, 1950."

if any such payment shall have been made or granted, the administering agency shall take such action as may be necessary to recover the same, and, in addition thereto any such claimant shall forfeit all rights under this Act.

Hearings With Respect to Claims

Sec. 11. The Commission shall notify all claimants of the approval or denial of their claims, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full allowable amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission or its representatives with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General is authorized and directed to allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

Amendment to Trading With the Enemy Act

Sec. 12. The Trading With the Enemy Act of October 6, 1917, as amended, is hereby amended by adding at the end thereof the following new section:

"Sec. 39. No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. The net proceeds remaining upon the completion of administration, liquidation, and disposition pursuant to the provisions of this Act of any such property or interest therein shall be covered into the Treasury at the earliest practicable date. Nothing in this section shall be construed to repeal or otherwise affect the operation of the provisions of section 32 of this Act or of the Philippine Property Act of 1946."

War Claims Fund

Sec. 13.³⁰ (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the War Claims Fund. The War Claims Fund shall consist of all sums covered into the Treasury pursuant to the provisions of section 39 of the Trading With the Enemy Act of October 6, 1917, as amended. The moneys in such fund shall be available for expenditure only as provided in this Act or as may be provided hereafter by the Congress.³¹

(b) Before August 1, 1956, the Secretary of Labor shall estimate and report to the President the total amount which will be required to pay all benefits payable by reason of section 5(f) of this Act. If the President approves the amount so estimated as reasonably accurate, the total amount so

³⁰ Public Law 744, 89d Cong. (68 Stat. 1673), amended section 13 by striking out subsections (b) and (c) thereof and substituting new language. Subsections (b) and (c) of section 13 prior to this amendment, provided:

"(b) The Federal Security Administrator is authorized and directed to estimate and certify to the Secretary of the Treasury the total amount which will be required to pay all benefits payable as a result of the enactment of section 5(f) of this Act. The Secretary of the Treasury shall transfer from the War Claims Fund to the general fund of the Treasury a sum equal to the total amount so certified by the Federal Security Administrator.

"(c) The Federal Security Administrator is authorized and directed to estimate and certify to the Secretary of the Treasury the total amount which will be required to pay all additional benefits payable as a result of the enactment of section 4(c) of this Act. The Secretary of the Treasury shall transfer from the War Claims Fund to the general fund of the Treasury a sum equal to the total amount so certified by the Federal Security Administrator."

³¹ The General Appropriation Act of 1951 provided: "No claims shall be allowed or paid under the provisions of said War Claims Act of 1918 from any funds other than those covered into the Treasury pursuant to the provisions of section 39 of the Trading With the Enemy Act of October 6, 1917, as amended, as provided by section 13(a) of said War Claims Act of 1948." (64 Stat. 720; 50 U.S.C. App. § 2021a). Repeated, Act Aug. 31, 1951 (65 Stat. 268); Act July 5, 1952 (66 Stat. 410); Act July 31, 1953 (67 Stat. 312); Act June 24, 1954 (68 Stat. 293).

estimated as reasonably accurate, the total amount so estimated and approved shall be certified to the Secretary of the Treasury; if the President does not so approve he shall determine such amount, and the amount so determined shall be certified to the Secretary of the Treasury. Such certification shall be made on or before September 1, 1956. The Secretary of the Treasury shall then transfer from the War Claims Fund to the general fund of the Treasury a sum equal to the total amount certified to him under this subsection.

(c) Before August 1, 1956, the Secretary of Labor shall estimate and report to the President the total amount which will be required to pay all additional benefits payable as a result of the enactment of section 4(c) of this Act. If the President approves the amount so estimated as reasonably accurate, the total amount so estimated and approved shall be certified to the Secretary of the Treasury; if the President does not so approve, he shall determine such amount, and the amount so determined shall be certified to the Secretary of the Treasury. Such certification shall be made on or before September 1, 1956. The Secretary of the Treasury shall then transfer from the War Claims Fund to the general fund of the Treasury a sum equal to the total amount certified to him under this subsection.

(d) On or before August 1, 1956, the Secretary of State³² is authorized and directed to certify to the Secretary of the Treasury the total amount of all obligations canceled pursuant to the provisions of section 4(b)(1) of this Act. The Secretary of the Treasury shall transfer from the war claims fund to the general fund of the Treasury an amount equal to the total amount so certified.

(e) There are hereby authorized to be appropriated, out of any money in the war claims fund, such sums as may be necessary to enable the Commission to carry out its functions under this Act.

Payments to Certain Members of Religious Orders

Sec. 14. In any case in which any money is payable as a result of the enactment of this Act to any person who is prevented from accepting such money by the rules, regulations, or customs of the church or the religious order or organization of which he is a member, such money shall be paid, upon the request of such person, to such church or to such religious order or organization.

Sec. 15.³³ (a) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim for compensation filed by or on behalf of any individual who, being then an American citizen, served in the military or naval forces of any government allied with the United States during World War II who was held as a prisoner of war for any period of time subsequent to December 7, 1941, by any government of any nation with which such allied government has been at war subsequent to such date. Compensation shall be payable under this section in accordance with the standards established by, and at the rates prescribed in, subsection (b) of section 6 of this Act, and paragraphs (2) and (3) of subsection (d) of such section 6.

(b) The amount payable under this section shall be reduced by such sum as the individual entitled to compensation under this section has received or is entitled to receive from any government by reason of the same detention.

(c) In the event of death of the individual entitled to compensation under this section, payment may be made to the persons specified in paragraph (4) of subsection (d) of section 6 of this Act.

(d) Claims for benefits under this section must be filed within one year after the date of enactment of this section.

(e) Any claim allowed under the provisions of this section shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

Sec. 16.³³ (a) As used in this section, the term "merchant seaman" means any individual who was employed as a seaman or crew member on any vessel registered under the laws of the United States, or under the laws of any government friendly to the United States during World War II, and who

³² Public Law 744, 83d Cong. (68 Stat. 1033), amended subsection (d) of section 7 by striking out "The Secretary of State" and inserting in lieu thereof the following: "On or before August 1, 1956, the Secretary of State".

³³ Public Law 744, 83d Cong. (68 Stat. 1033), added sections 15, 16, and 17 to the War Claims Act of 1948, as amended.

was a citizen of the United States on and after December 7, 1941, to the date of his death or the date of filing claim under this section; except any such individual who is entitled to, or who has received, benefits under section 5 of this Act as a "civilian American citizen."

(b) The Commission is authorized to receive and determine, according to law, the amount and validity, and provide for the payment of any claim for detention benefits filed by or on behalf of any merchant seaman who, being then a merchant seaman, was captured or interned or held by the Government of Germany or the Imperial Japanese Government, its agents or instrumentalities in World War II for any period of time subsequent to December 7, 1941, during which he was held by either such government as a prisoner, internee, hostage, or in any other capacity. Detention benefits shall be paid under this section at the rates prescribed and in the manner provided in subsections (c) and (d) of section 5 of this Act.

(c) Payment of any claim filed under this section shall not be made to any merchant seaman, or to any survivor or survivors thereof, who, voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any government hostile to the United States during World War II.

(d) Claims for benefits under this section must be filed within one year after the date of enactment of this section.

(e) Any claim allowed under the provisions of this section shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

Sec. 17.³³ (a) (1) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim filed by—

(A) any individual who—

(i) on or after December 7, 1941, was a member of the military or naval forces of the United States;

(ii) is the survivor of any deceased individual described in subparagraph (i);

(iii) was a national of the United States on December 7, 1941, and is a national of the United States on the date of enactment of this section; or

(iv) is the survivor of any deceased individual who was a national of the United States on December 7, 1941, and would be a national of the United States on the date of enactment of this section if living; or

(B) any partnership, firm, corporation, or other legal entity, in which more than 50 per centum of the ownership was vested, directly or indirectly, both on December 7, 1941, and on the date of enactment of this section, in individuals referred to in subparagraph (A) of this paragraph;

for losses arising as a result of the sequestration of accounts, deposits, or other credits of such individual or legal entity in the Philippines by the Imperial Japanese Government.

(2) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim filed by any bank or other financial institution doing business in the Philippines which reestablished sequestered accounts, deposits or other credits of—

(A) any individual referred to in subparagraph (A) of paragraph (1) of this subsection; or

(B) any partnership, firm, corporation, or other legal entity, in which more than 50 per centum of the ownership was vested, directly or indirectly, both on December 7, 1941, and on the date of reestablishment of such sequestered credits, in individuals referred to in such subparagraph (A); for reimbursement of the amounts of such sequestered credits paid by such bank or financial institution.

(b) Claims must be filed under this section within one year after the date of enactment of this section.

(c) Where any individual entitled to payment under this section is under any legal disability, payment may be made in accordance with the provisions of subsection (e) of section 5 of this Act. In the case of the death of any individual entitled to payment of any claim under this section, payment of such claim shall be made to the individual specified, and in the order provided, in subsection (d) of section 6 of this Act; except that no payment shall be made under this section to any individual who voluntarily, know-

³³ Public Law 744, 83d Cong. (68 Stat. 1023), added sections 15, 16, and 17 to the War Claims Act of 1948, as amended.

ingly, and without duress, gave aid to or collaborated with or in any manner served any government hostile to the United States during World War II.

(d) Each claim allowed under this section shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established under section 13 of this Act. The Secretary of the Treasury shall pay such claims as follows:

(1) In the case of each claim allowed in an amount equal to or less than \$500, such claim shall be paid in full; and

(2) In the case of each claim allowed in an amount greater than \$500, such claim shall be paid in two installments. The first installment shall be paid in an amount equal to \$500 plus $66\frac{2}{3}$ per centum of the amount of such claim allowed in excess of \$500. The last installment shall be computed as of September 1, 1956, under the next sentence of this paragraph, and, as so computed, shall be paid from the sums remaining in the War Claims Fund on that date. If the sums remaining in the War Claims Fund on September 1, 1956, are sufficient to satisfy all claims allowed under this section and not paid in full, the unpaid portion of each such claim shall be paid in full; if the sums remaining in the War Claims Fund on September 1, 1956, are not sufficient to satisfy all claims allowed under this section and not paid in full, the last installment payable on each such claim shall be reduced ratably, and, as so reduced, shall be paid from the War Claims Fund.

Approved July 3, 1948.

Public Law 87-846

87th Congress, H. R. 7283

October 22, 1962

An Act

76 Stat. 1107 (1962)

50 U.S.C. App. §§ 2017-2017p (1964)

To amend the War Claims Act of 1948, as amended, to provide compensation for certain World War II losses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I

Section 101. That the War Claims Act of 1948, as amended, is further amended by inserting after section 1 thereof the following:

"Title I"

Sec. 102. The word "Act" wherever it appears in title I except in section 13(a) in reference to the War Claims Act of 1948, as amended, is amended to read "title".

Sec. 103. The War Claims Act of 1948, as amended, is further amended by adding at the end thereof the following:

"Title II

"Definitions

"Sec. 201. As used in this title the term or terms—

"(a) 'Albania', 'Austria', 'Czechoslovakia', 'the Free Territory of Danzig', 'Estonia', 'Germany', 'Greece', 'Latvia', 'Lithuania', 'Poland', and 'Yugoslavia', when used in their respective geographical senses, mean the territorial limits of each such country or free territory, as the case may be, in continental Europe as such limits existed on December 1, 1937.

"(b) 'Commission' means the Foreign Claims Settlement Commission of the United States established pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).

"(c) 'National of the United States' means (1) a natural person who is a citizen of the United States, (2) a natural person who, though not a citizen of the United States, owes permanent allegiance to the United States, and (3) a corporation, partnership, unincorporated body, or other entity, organized under the laws of the United States, or of any State, the Commonwealth of Puerto Rico, the District of Columbia, or any possession of the United States and in which more than 50 per centum of the outstanding capital stock or other proprietary or similar interest is owned, directly or indirectly, by persons referred to in clauses (1) and (2) of this subsection. It does not include aliens.

"(d) 'Property' means real property and such items of tangible personalty as can be identified and evaluated.

"Claims Authorized

"Sec. 202. The Commission is directed to receive and to determine according to the provisions of this title the validity and amount of claims of nationals of the United States for—

"(a) loss or destruction of, or physical damage to, property located in Albania, Austria, Czechoslovakia, the Free Territory of Danzig, Estonia, Germany, Greece, Latvia, Lithuania, Poland, or Yugoslavia, or in territory which was part of Hungary or Rumania on December 1, 1937, but which

was not included in such countries on September 15, 1947, which loss, destruction, or physical damage occurred during the period beginning September 1, 1939, and ending May 8, 1945, or which occurred in the period beginning July 1, 1937, and ending September 2, 1945, to property in territory occupied or attacked by the Imperial Japanese military forces (including territory to which Japan has renounced all right, title, and claim under article 2 of the Treaty of Peace Between the Allied Powers and Japan) except the island of Guam: *Provided*, That claims for loss, destruction, or damage occurring in the Commonwealth of the Philippines shall not be allowed except on behalf of nationals of the United States who have received no payment, and certify under oath or affirmation that they have received no payment, on account of the same loss, destruction, or damage under the Philippine Rehabilitation Act of 1946, whether or not claim was filed thereunder: *Provided further*, That such loss, destruction, or damage must have occurred, as a direct consequence of (1) military operations of war or (2) special measures directed against property in such countries or territories during the respective periods specified, because of the enemy or alleged enemy character of the owner, which property was owned, directly or indirectly, by a national of the United States at the time of such loss, damage or destruction;

“(b) damage to, or loss or destruction of, ships or ship cargoes directly or indirectly owned by a national of the United States at the time such damage, loss, or destruction occurred, which was a direct consequence of military action by Germany or Japan during the period beginning September 1, 1939, and ending September 2, 1945; no award shall be made under this subsection in favor of any insurer or reinsurer as assignee or otherwise as successor in interest to the right of the insured;

“(c) net losses under war-risk insurance or reinsurance policies or contracts, incurred in the settlement of claims for insured losses of ships directly or indirectly owned by a national of the United States at the time of the loss, damage, or destruction of such ships and at the time of the settlement of such claims, which insured losses were a direct consequence of military action by Germany or Japan during the period beginning September 1, 1939, and ending September 2, 1945; such net losses shall be determined by deducting from the aggregate of all payments made in the settlement of such insured losses the aggregate of the net amounts received by any such insurance companies on all policies or contracts of war-risk insurance or reinsurance on ships under which the insured was a national of the United States, after deducting expenses; and

“(d) loss or damage on account of—

“(1) the death of any person who, being then a civilian national of the United States and a passenger on any vessel engaged in commerce on the high seas, died or was killed as a result of military action by Germany or Japan which occurred during the period beginning September 1, 1939, and ending December 11, 1941; awards under this paragraph shall be made only to or for the benefit of the following persons in the order of priority named:

“(A) widow or husband if there is no child or children of the deceased;

“(B) widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares;

“(C) child or children of the deceased (in equal shares) if there is no widow or husband; and

“(D) parents of the deceased (in equal shares) if there is no widow, husband, or child;

“(2) injury or permanent disability sustained by any person, who being then a civilian national of the United States and a passenger on any vessel engaged in commerce on the high seas, was injured or permanently disabled as a result of military action by Germany or Japan which occurred during the period beginning September 1, 1939, and ending December 11, 1941; awards under this paragraph shall be payable solely to the person so injured or disabled;

“(3) the loss or destruction, as a result of such action, of property on such vessel, as determined by the Commission to be reasonable, useful, necessary, or proper under the circumstances, which property was owned by any civilian national of the United States who was then a passenger on such vessel; and in the case of the death of any person suffering such loss, awards

under this paragraph shall be made only to or for the benefit of the persons designated in paragraph (1) of this subsection and in the order of priority named therein.

"Transfers and Assignments

"Sec. 203. The transfer or assignment for value of any property forming the subject matter of a claim under subsection (a) or (b) of section 202 subsequent to its damage, loss, or destruction shall not operate to extinguish any claim of the transferor otherwise compensable under either of such subsections. If a claim which could otherwise be allowed under subsection (a) or (b) of section 202 has been assigned for value prior to the enactment of this title, the assignee shall be the party entitled to claim thereunder.

"Nationality of Claimants

"Sec. 204. No claim shall be allowed under subsection (a), (b), or (c) of section 202 of this title unless the property upon which it is based was owned by a national or nationals of the United States on the date of loss, damage, or destruction and unless the claim was owned by a national or nationals of the United States continuously thereafter until the date of filing with the Commission pursuant to this title. Where any person who lost United States citizenship solely by reason of marriage to a citizen or subject of a foreign country reacquired such citizenship before the date of enactment of this title, then if such individual, but for such marriage would have been a national of the United States at all times on and after the date of such loss, damage, or destruction until the filing of the claim, such individual shall be treated for all purposes of this title as having been a national of the United States at all such times.

"Claims of Stockholders

"Sec. 205. (a) A claim under section 202 of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall be denied.

"(b) A claim under section 202 of this title, based upon a direct ownership interest in a corporation, association, or other entity which suffered a loss within the meaning of said section, shall be allowed, subject to other provisions of this title, if such corporation, association, or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant in any such claim.

"(c) A claim under section 202 of this title, based upon an indirect ownership interest in a corporation, association, or other entity which suffered a loss within the meaning of said section, shall be allowed, subject to other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States.

"(d) Any award on a claim under subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant bears to the entire ownership interest thereof.

"Deductions in Making Awards

"Sec. 206. (a) In determining the amount of any award there shall be deducted all amounts the claimant has received on account of the same loss or losses with respect to which an award is made under this title.

"(b) Each claim in excess of \$10,000 filed under this title by a corporation shall include a statement under oath disclosing the aggregate amount of Federal tax benefits derived by such corporation in any prior taxable year or years resulting from any deduction or deductions claimed for the loss or losses with respect to which such claim is filed. In determining the amount of any award where the allowable loss exceeds \$10,000 there shall be deducted an amount equal to the aggregate amount of Federal tax benefits so derived by the claimant. For the purposes of this subsection, such Federal tax benefits shall be the aggregate of the amounts by which the claimant's taxes for such year or years under chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code of 1939, or subtitle A of the Internal Revenue Code of 1954 were decreased with respect to such loss or losses. Any payments made on an award reduced by reason of this subsection shall be exempt from Federal income taxes.

"Consolidated Awards

"Sec. 207. With respect to any claim which, at the time of the award, is vested in persons other than the person by whom the loss was sustained, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimant therein; and all such claimants shall participate, in proportion to their indicated interests, in the payments authorized by this title in all respects as if the award had been in favor of a single person.

"Certain Awards Prohibited

"Sec. 208. No award shall be made under this title to or for the benefit of (1) any person who has been convicted of a violation of any provision of chapter 115, title 18 of the United States Code, or of any other crime involving disloyalty to the United States, or (2) any claimant whose claim under this title is within the scope of title III of the International Claims Settlement Act of 1949, as amended (69 Stat. 570), except any claimant whose award under section 303(1) of title III of the International Claims Settlement Act of 1949, as amended, is recertified pursuant to subsection (b) of section 209 of this title.

"Certification of Awards

"Sec. 209. (a) The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, for payment out of the War Claims Fund each award made pursuant to section 202.

"(b) The Commission shall recertify to the Secretary of the Treasury, in terms of United States currency, for payment out of the War Claims Fund, awards heretofore made with respect to claims against the Government of Hungary under section 303(1) of title III of the International Claims Settlement Act of 1949, as amended. Nothing contained in this subsection shall be construed as authorizing the filing of new claims against Hungary.

"Claim Filing Period

"Sec. 210. Within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later, the Commission shall give public notice by publication in the Federal Register of the time when, and the limit of time within which claims may be filed, which limit shall not be more than eighteen months after such publication.

"Claims Settlement Period

"Sec. 211. The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than four years following the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title.

"Notification to Claimants

"Sec. 212. Each award or denial of a claim by the Commission, whether rendered before or after a hearing, shall include a specific statement of the facts and of the reasoning of the Commission in support of its conclusion.

"Payment of Awards; Priorities; Limitations

"Sec. 213. (a) The Secretary of the Treasury shall pay out of the War Claims Fund on account of awards certified by the Commission pursuant to this title as follows and in the following order of priority:

"(1) Payment in full of awards made pursuant to section 202(d) (1) and (2), and thereafter of any award made pursuant to section 202(a) to any claimant certified to the Commission by the Small Business Administration as having been, on the date of loss, damage, or destruction, a small business concern within the meaning now set forth in the Small Business Act, as amended.

"(2) Thereafter, payments from time to time on account of the other awards made pursuant to section 202 in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment made pursuant to this paragraph on account of any award shall not exceed \$10,000.

"(3) Thereafter, payments from time to time on account of the unpaid balance of each remaining award made pursuant to section 202 or recertified pursuant to subsection (b) of section 209 which shall bear to such unpaid balance the same proportion as the total amount in the War Claims Fund and available for distribution at the time such payments are made bears to the aggregate unpaid balances of all such awards. No payment made pursuant to this paragraph on account of any award shall exceed the unpaid balance of such award. Payments heretofore made under section 310 of title III of the International Claims Settlement Act of 1949, as amended, on awards made against the Government of Hungary under section 303(1) of title III of the International Claims Settlement Act of 1949, as amended, and recertified under subsection (b) of section 209, shall be considered as payments under this paragraph and no payment shall be made on any recertified award until the percentage of distribution on awards made under section 202 exceeds the corresponding percentage of distribution on such recertified award: *Provided*, That no payment made on awards recertified under subsection (b) of section 209 shall exceed 40 per centum of the amount of the award recertified.

"(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

"(c) For the purpose of making any such payments, other than under section 213(a)(1), an 'award' shall be deemed to mean the aggregate of all awards certified for payment in favor of the same claimant.

"(d) If any person to whom any payment is to be made pursuant to this title is deceased or is under a legal disability, payment shall be made to his legal representative, except that if any payment to be made is not over \$1,000 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates.

"(e) Payment on account of any award pursuant to this title shall not, unless such payment is for the full amount of the award, extinguish any rights against any foreign government for the unpaid balance of the award.

"(f) Payments made under this section on account of any award for loss, damage, or destruction occurring in the Commonwealth of the Philippines shall not exceed the amount paid on account of awards in the same amount under the Philippine Rehabilitation Act of 1946.

"Fees of Attorneys and Agents

"Sec. 214. No remuneration on account of services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum (or such lesser per centum as may be fixed by the Commission with respect to any class of claims) of the total amount paid pursuant to any award certified under the provisions of this title on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both.

"Application of Other Laws

"Sec. 215. To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of this Act and title I of the International Claims Settlement Act of 1949, as amended, shall apply to this title: The first sentence of subsection (b) of section 2, all of subsection (c) of section 2 and section 11 of title I of this Act, and subsections (c), (d), (e), and (f) of section 7 of the International Claims Settlement Act of 1949, as amended.

"Transfer of Records

"Sec. 216. The Secretary of State is authorized and directed to transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

“Administrative Expenses

“Sec. 217. There are hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated such sums as may be necessary (but not to exceed the total covered into the Treasury to the credit of miscellaneous receipts under section 39 subsection (d) of the Trading With the Enemy Act) to enable the Commission and the Treasury Department to pay their administrative expenses in carrying out their respective functions under this title.”

Sec. 104. (a) Section 2 of the War Claims Act of 1948, as amended, is amended by adding at the end thereof the following:

“(d) The term of office of members of the Foreign Claims Settlement Commission holding office on the date of enactment of this subsection shall expire at the end of the one-year period which begins on such date, but during such one-year period each such member shall continue to hold office at the pleasure of the President. The President shall thereafter appoint, by and with the advice and consent of the Senate, three members of the Commission. The term of office of each member of the Commission shall be three years, except that of the members first appointed after the end of the one-year period which begins on the date of enactment of this subsection, one shall be appointed for a term of three years, one for a term of two years, and one for a term of one year.”

(b) Nothing in this section shall be construed to preclude the reappointment as a member of the Foreign Claims Settlement Commission of any person holding office as a member of such Commission on the date of enactment of this Act.

Title II

Sec. 201. That the Trading With the Enemy Act, as amended, is amended as follows:

Sec. 202. Section 39 of the Trading With the Enemy Act is amended by adding at the end thereof the following new subsection:

“(d) The Attorney General is authorized and directed to cover into the Treasury from time to time for deposit in the War Claims Fund such sums from property vested in him or transferred to him under this Act as he shall determine in his discretion not to be required to fulfill obligations imposed under this Act or any other provision of law, and not to be the subject matter of any judicial action or proceeding. There shall be deducted from each such deposit 5 per centum thereof for expenses incurred by the Foreign Claims Settlement Commission and by the Treasury Department in the administration of title II of the War Claims Act of 1948. Such deductions shall be made before any payment is made pursuant to such title. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.”

Sec. 203. Section 9(a) is amended by striking out the period at the end thereof and inserting in lieu thereof a colon and the following: “*Provided further*, That upon a determination made by the President, in time of war or during any national emergency declared by the President, that the interest and welfare of the United States require the sale of any property or interest or any part thereof claimed in any suit filed under this subsection and pending on or after the date of enactment of this proviso the Alien Property Custodian or any successor officer, or agency may sell such property or interest or part thereof, in conformity with law applicable to sales of property by him, at any time prior to the entry of final judgment in such suit. No such sale shall be made until thirty days have passed after the publication of notice in the Federal Register of the intention to sell. The net proceeds of any such sale shall be deposited in a special account established in the Treasury, and shall be held in trust by the Secretary of the Treasury pending the entry of final judgment in such suit. Any recovery of any claimant in any such suit in respect of the property or interest or part thereof so sold shall be satisfied from the net proceeds of such sale unless such claimant, within sixty days after receipt of notice of the amount of net proceeds of sale serves upon the Alien Property Custodian, or any successor officer or agency, and files with the court an election to waive all claims to the net proceeds, or any part thereof, and to claim just compensation instead. If the court finds that the claimant has established an interest, right, or title in any property in respect of which such an election has been served and filed, it shall proceed to determine the amount which will constitute just compensation for such interest, right, or title, and shall

order payment to the claimant of the amount so determined. An order for the payment of just compensation hereunder shall be a judgment against the United States and shall be payable first from the net proceeds of the sale in an amount not to exceed the amount the claimant would have received had he elected to accept his proportionate part of the net proceeds of the sale, and the balance, if any, shall be payable in the same manner as are judgments in cases arising under section 1346 of title 28, United States Code. The Alien Property Custodian or any successor officer or agency shall, immediately upon the entry of final judgment, notify the Secretary of the Treasury of the determination by final judgment of the claimant's interest and right to the proportionate part of the net proceeds from the sale, and the final determination by judgment of the amount of just compensation in the event the claimant has elected to recover just compensation for the interest in the property he claimed."

Sec. 204. (a) Section 32(h) is amended by striking out all that follows the first sentence in the first paragraph down through the third paragraph, and inserting in lieu thereof the following: "In the case of any organization not so designated before the date of enactment of this amendment, such organization may be so designated only if it applies for such designation within three months after such date of enactment."

"The President, or such officer as he may designate, shall, before the expiration of the one-year period which begins on the date of enactment of this amendment, pay out of the War Claims Fund to organizations designated before or after the date of enactment of this amendment pursuant to this subsection the sum of \$500,000. If there is more than one such designated organization, such sum shall be allocated among such organizations in the proportions in which the proceeds of heirless property were distributed, pursuant to agreements to which the United States was a party, by the Intergovernmental Committee for Refugees and successor organizations thereto. Acceptance of payment pursuant to this subsection by any such organization shall constitute a full and complete discharge of all claims filed by such organization pursuant to this section, as it existed before the date of enactment of this amendment."

"No payment may be made to any organization designated under this section unless it has given firm and responsible assurances approved by the President that (1) the payment will be used on the basis of need in the rehabilitation and settlement of persons in the United States who suffered substantial deprivation of liberty or failed to enjoy the full rights of citizenship within the meaning of subdivisions (C) and (D) of subsection (a) (2) of this section; (2) it will make to the President, with a copy to be furnished to the Congress, such reports (including a detailed annual report on the use of the payment made to it) and permit such examination of its books as the President, or such officer or agency as he may designate, may from time to time require; and (3) it will not use any part of such payment for legal fees, salaries, or other administrative expenses connected with the filing of claims for such payment or for the recovery of any property or interest under this section."

(b) The first sentence of section 33 of such Act is amended by striking out all that follows "whichever is later" and inserting a period.

(c) Section 39 of such Act is amended by adding at the end of subsection (b) the following new sentence: "Immediately upon the enactment of this sentence, the Attorney General shall cover into the Treasury of the United States, for deposit into the War Claims Fund, from property vested in or transferred to him under this Act, the sum of \$500,000 to make payments authorized under section 32(h) of this Act."

Sec. 205. At the end of the Act, as amended, add the following section:

"Sec. 40. (a) Subject to the provisions of subsection (b) hereof, all rights and interests of individuals in estates, trusts, insurance policies, annuities, remainders, pensions, workmen's compensation and veterans' benefits vested under this Act after December 17, 1941, which have not become payable or deliverable to or have not vested in possession in the Attorney General prior to December 31, 1961, are hereby divested: *Provided*, That the provisions of this section shall not affect the right of the Attorney General to retain all such property rights and interests and to collect all income which is payable to or vested in possession in him prior to December 31, 1961.

"(b) Nothing contained in this section shall divest or require the divest

ment of any portion of any such interest the beneficial owner of which is a natural person who has been convicted personally and by name by a court of competent jurisdiction of murder, ill treatment, or deportation for slave labor of prisoners of war, political opponents, hostages, or civilian population in occupied territories, or of murder or ill treatment of military or naval persons, or of plunder or wanton destruction without justified military necessity.

“(c) At the earliest practicable time after the effective date of this Act, the Attorney General shall transmit to the lawful owner or custodian of any interest divested by this section written notice of such divestment.”

Sec. 206. At the end of the Act, as amended, add the following new section:

“Sec. 41. (a) Notwithstanding any statute of limitation, lapse of time, any prior decision by any court of the United States, or any compromise, release or assignment to the Alien Property Custodian, jurisdiction is hereby conferred upon the United States Court of Claims to hear, determine, and report to the Congress concerning the claims against the United States for the proceeds received by the United States from the sale of the property vested under the provisions of the Trading With the Enemy Act by vesting order numbered 33 relating to certificate numbers 104 to 121, inclusive, 125, 126, 128 to 134, inclusive, and 137 to 139, inclusive. Proceedings with respect to such claims may be instituted hereunder not later than one year after the date of the enactment of this Act.

“(b) As used in this section the word ‘copyrights’ includes copyrights, claims of copyrights, rights to copyrights, and rights to copyright renewals.

“(c) All copyrights vested in the Alien Property Custodian or the Attorney General under the provisions of this Act subsequent to December 17, 1941, which have not been returned or otherwise disposed of under this Act, except copyrights vested by vesting orders 128 (7 F.R. 7578), 13111 (14 F.R. 1730), 14349 (15 F.R. 1575), 17366 (16 F.R. 2483), and 17952 (16 F.R. 6162) and copyrights vested with respect to the motion picture listed last in exhibit A of vesting order 11803, as amended (13 F.R. 5167, 15 F.R. 1626), are hereby divested as a matter of grace, effective the ninety-first day after the date of enactment of this section, and the persons entitled thereto shall on that day succeed to the rights, privileges, and obligations arising out of such copyrights, subject, however, to—

“(1) the rights of licensees under licenses issued by the Alien Property Custodian or the Attorney General in respect of such copyrights;

“(2) the rights of assignees under assignments by the Alien Property Custodian or the Attorney General of interests in such licenses; and

“(3) the right retained by the United States to reproduce, for its own use, or exhibit any divested copyrighted motion picture films.

The rights and interests remaining in the Attorney General under licenses issued by him or by the Alien Property Custodian in respect to copyrights divested hereunder are hereby transferred, effective the day of divestment, to the persons entitled to such copyrights: *Provided*, That all unpaid royalties or other income accrued in favor of the Attorney General under such licenses prior to the day of divestment shall be paid by the licensees to the Attorney General.

“(d) All rights or interests vested in the Alien Property Custodian or the Attorney General under the provisions of this Act subsequent to December 17, 1941, arising out of prevesting contracts entered into with respect to copyrights, except—

“(1) royalties or other income received by or accrued in favor of the Alien Property Custodian or the Attorney General under such contracts;

“(2) rights or interests which have been returned or otherwise disposed of under this Act; and

“(3) rights or interests vested by vesting orders 128 (7 F.R. 7578), 13111 (14 F.R. 1730), 14349 (15 F.R. 1575), and 17366 (16 F.R. 2483),

are hereby divested as a matter of grace, effective the ninety-first day after the date of enactment of this section, and the persons entitled to such rights or interests shall succeed thereto, subject to the right of the Attorney General to collect and receive all unpaid royalties or other income accrued in his favor under such prevesting contracts prior to the day of divestment.

“(e) Nothing in this section shall be construed to transfer to a person entitled to a copyright divested hereunder the right of the Attorney General

to sue for the infringement of such copyright during the period between (1) the vesting thereof or the vesting of rights and interests in a contract entered into with respect thereto, and (2) the day of divestment. The right to sue for infringement shall remain in the Attorney General."

Title III

Sec. 301. If any provision of this Act, or the application thereof to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provisions to other persons or circumstances, shall not be affected.

Approved October 22, 1962.

International Claims Settlement Act of 1949, as Amended

Public Law 81-455

81st Congress, H.R. 4406

March 10, 1950

64 Stat. 12 (1950)

22 U.S.C. §§ 1621-1627 (1964)

An Act to provide for the settlement of certain claims of the Government of the United States on its own behalf and on behalf of American nationals against foreign governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Claims Settlement Act of 1949".

Title I¹

Sec. 2. For the purposes of this title—

(a) The term "person" shall include an individual, partnership, corporation, or the Government of the United States.

(b) The term "United States" when used in a geographical sense shall include the United States, its Territories and insular possessions, and the Canal Zone.

(c) The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

(d) The term "Yugoslav Claims Agreement of 1948" means the agreement between the Governments of the United States of America and of the Federal People's Republic of Yugoslavia regarding pecuniary claims of the United States and its nationals, signed July 19, 1948.

Sec. 3. (a) There is hereby established in the Department of State a commission to be known as the International Claims Commission of the United States² (hereinafter referred to as the "Commission") and to be composed of three persons, to be appointed by the President by and with the advice and consent of the Senate. One of such members shall be designated by the President as the Chairman of the Commission and each shall receive compensation at the rate of \$15,000 per annum. Two members of the Commission shall constitute a quorum for the transaction of business. Any vacancy that may occur in the membership of the Commission shall be filled in the same manner as in the case of an original appointment: *Provided*, That in the event of the death, resignation, absence, or disability of a member, the President may designate an acting member from among persons in the judicial or in the executive branch of the Government (including employees of the Commission), who possess the qualifications prescribed by this subsection, to temporarily perform without additional compensation the duties of the member until a successor is appointed or the absence or disability of the member shall cease.

(b) The principal office of the Commission shall be in the District of Columbia. The Secretary of State, in accordance with the provisions of the civil-service laws and the Classification Act of 1949,³ as amended, upon the recommendation of the Commission, may appoint and fix the compensation

¹ Public Law 285, 84th Cong., approved August 9, 1955 (69 Stat. 562), amended the International Claims Settlement Act of 1949 by inserting "TITLE I" before section 2, and by amending the word "Act", wherever appearing in title I in reference to the International Claims Settlement Act of 1949, to read "title".

² The International Claims Commission of the United States was abolished and its functions transferred to the Foreign Claims Settlement Commission of the United States by Reorganization Plan No. 1, effective July 1, 1954.

³ See section 1106(a) and section 1202(1) of the Classification Act of 1949 (63 Stat. 972).

of an executive director, and of officers, attorneys, investigators, and other employees.

(c) ⁴ The Commission may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The President may fix a termination date for the authority of the Commission, and the terms of office of its members under this title. Any member of the Commission may be removed by the Secretary of State, upon notice and hearing, for neglect of duty, or malfeasance in office, but for no other cause. Not later than six months after its organization, and every six months thereafter, the Commission shall make a report, through the Secretary of State, to the Congress concerning its operations under this title. The Commission shall, upon completion of its work, certify in duplicate to the Secretary of State and to the Secretary of the Treasury the following: (1) A list of all claims disallowed; (2) a list of all claims allowed, in whole or in part, together with the amount of each claim and the amount awarded thereon; and (3) a copy of the decision rendered in each case.

No members of such Commission shall be appointed after the effective date of this title until such Commission is reorganized by further Act of Congress but acting members may be designated by the President as provided by this section, who shall receive no compensation from the funds appropriated by H.R. 6200 for defraying the expenses of such Commission.

Sec. 4. (a) The Commission shall have jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of the Government of the United States and of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948, or included within the terms of any claims agreement hereafter concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof. In the decision of claims under this title, the Commission shall apply the following in the following order: (1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity.

(b) The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. In addition, the Commission is authorized and directed to mail a similar notice to the last-known address of each person appearing in the records of the Department of State as having indicated an intention of filing a claim with respect to a matter concerning which the Commission has jurisdiction under this title. All decisions shall be upon such evidence and written legal contentions as may be presented within such period as may be prescribed therefor by the Commission, and upon the results of any independent investigation of cases which the Commission may deem it advisable to make. Each decision by the Commission pursuant to this title shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered.

(c) Any member of the Commission, or any employee of the Commission, designated in writing by the Chairman of the Commission, may administer oaths and examine witnesses. Any member of the Commission may require by subpoena the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, records, correspondence, and other evidence, from any place in the United States at any designated place of inquiry or of hearing. The Commission is authorized to contract for the reporting of inquiries or of hearings. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpoena, the aid of any district court of the United States, as constituted by chapter 5 of title 28, United States Code (28 U.S.C. 81 and the following), and the United States court of any Territory or other place subject to the jurisdiction of the United States may be invoked in requiring the attendance and testimony of witnesses, and the production of such books, papers, documents.

⁴ Amended by Public Law 242, 83d Cong., approved August 8, 1953 (67 Stat. 506).

records, correspondence, and other evidence. Any such court within the jurisdiction of which the inquiry or hearing is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) The Commission may order testimony to be taken by deposition in any inquiry or hearing pending before it at any stage of such proceeding or hearing. Such depositions may be taken, under such regulations as the Commission may prescribe, before any person designated by the Commission and having power to administer oaths. Any person may be compelled to appear and depose, and to produce books, papers, documents, records, correspondence, and other evidence in the same way as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinabove provided. If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer, or by an officer or employee of the Commission, or other person commissioned by the Commission, or under letters rogatory issued by the Commission. Witnesses whose depositions are taken as authorized in this subsection, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(e) In addition to the penalties provided in title 18, United States Code, section 1001, any person guilty of any act, as provided therein, with respect to any matter under this title, shall forfeit all rights under this title, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same.

(f) In connection with any claim decided by the Commission pursuant to this title in which an award is made, the Commission may, upon the written request of the claimant or any attorney heretofore or hereafter employed by such claimant, determine and apportion the just and reasonable attorney's fees for services rendered with respect to such claim, but the total amount of the fees so determined in any case shall not exceed 10 per centum of the total amount paid pursuant to the award. Written evidence that the claimant and any such attorney have agreed to the amount of the attorney's fees shall be conclusive upon the Commission: *Provided, however,* That the total amount of the fees so agreed upon does not exceed 10 per centum of the total amount paid pursuant to the award. Any fee so determined shall be entered as a part of such award, and payment thereof shall be made by the Secretary of the Treasury by deducting the amount thereof from the total amount paid pursuant to the award. Any agreement to the contrary shall be unlawful and void. The Commission is authorized and directed to mail to each claimant in proceedings before the Commission notice of the provisions of this subsection. Whoever, in the United States or elsewhere, pays or offers to pay, or promises to pay, or receives on account of services rendered or to be rendered in connection with any such claim, compensation which, when added to any amount previously paid on account of such services, will exceed the amount of fees so determined by the Commission, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both, and if any such payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same, and, in addition thereto, any such person shall forfeit all rights under this title.

(g) The Attorney General shall assign such officers and employees of the Department of Justice as may be necessary to represent the United States as to any claims of the Government of the United States with respect to which the Commission has jurisdiction under this title. Any and all payments required to be made by the Secretary of the Treasury under this title pursuant to any award made by the Commission to the Government of the United States shall be covered into the Treasury to the credit of miscellaneous receipts.

(h) The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and grounds therefor, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission, or its

duly authorized representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States, or by any court by mandamus or otherwise.

(i) The Commission may in its discretion enter an award with respect to one or more items deemed to have been clearly established in an individual claim while deferring consideration and action on other items of the same claim.

(j) The Commission shall comply with the provisions of the Administrative Procedure Act of 1946 except as otherwise specifically provided by this title.

Sec. 5. The Commission shall, as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury and to the Secretary of State copies of the awards made in favor of the Government of the United States or of nationals of the United States under this title. The Commission shall certify to the Secretary of State, upon his request, copies of the formal submissions of claims filed pursuant to subsection (b) of section 4 of this title for transmission to the foreign government concerned.

Sec. 6.⁵ The Commission shall complete its affairs in connection with settlement of United States-Yugoslav claims arising under the Yugoslav Claims Agreement of 1948 not later than December 31, 1954: *Provided*, That nothing in this provision shall be construed to limit the life of the Commission, or its authority to act on future agreements which may be effected under the provisions of this legislation.

Sec. 7. (a) Subject to the limitations hereinafter provided, the Secretary of the Treasury is authorized and directed to pay, as prescribed by section 8 of this title, an amount not exceeding the principal of each award, plus accrued interest on such awards as bear interest, certified pursuant to section 5 of this title, in accordance with the award. Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

(b) ⁶ There shall be deducted from the amount of each payment made pursuant to subsection (c) of section 8, as reimbursement for the expenses incurred by the United States, an amount equal to 5 per centum of such payment. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(c) Payments made pursuant to this title shall be made only to the person or persons on behalf of whom the award is made, except that—

(1) if such person is deceased or is under a legal disability, payment shall be made to his legal representative: *Provided*, That if the total award is not over \$500 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General of the United States to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates;

(2) in the case of a partnership or corporation, the existence of which has been terminated and on behalf of which an award is made, payment shall be made, except as provided in paragraphs (3) and (4), to the person or persons found by the Comptroller General of the United States to be entitled thereto;

(3) if a receiver or trustee for any such partnership or corporation has been duly appointed by a court of competent jurisdiction in the United States and has not been discharged prior to the date of payment, payment shall be made to such receiver or trustee in accordance with the order of the court;

(4) if a receiver or trustee for any such partnership or corporation, duly appointed by a court of competent jurisdiction in the United States, makes an assignment of the claim, or any part thereof, with respect to which an award is made, or makes an assignment of such award, or any part thereof, payment shall be made to the assignee, as his interest may appear; and

⁵ Amended by Public Law 242, 83d Cong., approved August 9, 1953 (67 Stat. 506).

⁶ Amended by Public Law 242, 83d Cong., approved August 9, 1953 (67 Stat. 506).

(5) in the case of any assignment of an award, or any part thereof, which is made in writing and duly acknowledged and filed, after such award is certified to the Secretary of the Treasury, payment may, in the discretion of the Secretary of the Treasury, be made to the assignee, as his interest may appear.

(d) Whenever the Secretary of the Treasury, or the Comptroller General of the United States, as the case may be, shall find that any person is entitled to any such payment, after such payment shall have been received by such person, it shall be an absolute bar to recovery by any other person against the United States, its officers, agents, or employees with respect to such payment.

(e) Any person who makes application for any such payment shall be held to have consented to all the provisions of this title.

(f) Nothing in this title shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government.

Sec. 8. (a) There are hereby created in the Treasury of the United States (1) a special fund to be known as the Yugoslav Claims Fund; and (2) such other special funds as may, in the discretion of the Secretary of the Treasury, be required, each to be a claims fund to be known by the name of the foreign government which has entered into a settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this title. There shall be covered into the Treasury to the credit of the proper special fund all funds hereinafter specified. All payments authorized under section 7 of this title shall be disbursed from the proper fund, as the case may be, and all amounts covered into the Treasury to the credit of the aforesaid funds are hereby permanently appropriated for the making of the payments authorized by section 7 of this title.

(b) The Secretary of the Treasury is authorized and directed to cover into—

(1) the Yugoslav Claims Fund the sum of \$17,000,000 being the amount paid by the Government of the Federal People's Republic of Yugoslavia pursuant to the Yugoslav Claims Agreement of 1948;

(2) a special fund created for that purpose pursuant to subsection (a) of this section any amounts hereafter paid, in United States dollars, by a foreign government which has entered into a claims settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this title.

(c) The Secretary of the Treasury is authorized and directed out of the sums covered into any of the funds pursuant to subsection (b) of this section, and after making the deduction provided for in section 7(b) of this title—

(1) to make payments in full of the principal of awards of \$1,000 or less, certified pursuant to section 5 of this title;

(2) to make payments of \$1,000 on the principal of each award of more than \$1,000 in principal amount, certified pursuant to section 5 of this title;

(3) to make additional payment of not to exceed 25 per centum of the unpaid principal of awards in the principal amount of more than \$1,000;

(4) after completing the payments prescribed by paragraphs (2) and (3) of this subsection, to make payments, from time to time in ratable proportions, on account of the unpaid principal of all awards in the principal amount of more than \$1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution at the time such payments are made; and

(5) after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest on such awards as bear interest.

(d) The Secretary of the Treasury, upon the concurrence of the Secretary of State, is authorized and directed, out of the sum covered into the Yugoslav Claims Fund pursuant to subsection (b) of this section, after completing the payments of such funds pursuant to subsection (c) of this section, to make payment of the balance of any sum remaining in such fund to the Government of the Federal People's Republic of Yugoslavia to the extent required under article 1(c) of the Yugoslav Claims Agreement of 1948. The Secretary of State shall certify to the Secretary of the Treasury

the total cost of adjudication, not borne by the claimants, attributable to the Yugoslav Claims Agreement of 1948. Such certification shall be final and conclusive and shall not be subject to review by any other official, or department, agency, or establishment of the United States.

Sec. 9. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Commission to carry out its functions under this title.

Title II⁷

H.R. 6382

Vesting and Liquidation of Bulgarian, Hungarian, and Rumanian Property

Sec. 201. As used in this title the term—

(1) "Person" means a natural person, partnership, association, other unincorporated body, corporation, or body politic.

(2) "Property" means any property, right, or interest.

(3) "Treaty of peace", with respect to a country, means the treaty of peace with that country signed at Paris, France, February 10, 1947, which came into force between that country and the United States on September 15, 1947.

Sec. 202. (a) In accordance with article 25 of the treaty of peace with Bulgaria, article 29 of the treaty of peace with Hungary, and article 27 of the treaty of peace with Rumania, any property which was blocked in accordance with Executive Order 8389 of April 10, 1940, as amended, and remains blocked on the effective date of this title, and which, as of September 15, 1947, was owned directly or indirectly by Bulgaria, Hungary, and Rumania or by any national thereof as defined in such Executive order, shall vest in such officer or agency as the President may from time to time designate and shall vest when, as, and upon such terms as the President or his designee shall direct. Such property shall be sold or otherwise liquidated as expeditiously as possible after vesting under such rules and regulations as the President or his designee may prescribe. The net proceeds remaining upon completion of the administration and liquidation thereof, including the adjudication of any suits or claims with respect thereto under sections 207 and 208, shall be covered into the Treasury. Notwithstanding the preceding provisions of this subsection, any such property determined by the President or his designee to be owned directly by a natural person shall not be vested under this subsection but shall remain blocked subject to release when, as, and upon such terms as the President or his designee may prescribe. If, at any time within one year from the date of the vesting of any property under this subsection, the President or his designee shall determine that it was directly owned at the date of vesting by a natural person, then the President or his designee shall divest such property and restore it to its blocked status prior to vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe, or if such property has been liquidated, shall divest the net proceeds thereof and carry them in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe.

(b) The net proceeds of any property which was vested in the Alien Property Custodian or the Attorney General after December 17, 1941, pursuant to the Trading With the Enemy Act, as amended, and which at the date of vesting was owned directly or indirectly by Bulgaria, Hungary, or Rumania, or any national thereof, shall after completion of the administration, liquidation, and disposition of such property pursuant to such Act, including the adjudication of any suits or claims with respect thereto under such Act, be covered into the Treasury, except that the net proceeds of any such property which the President or his designee shall determine was directly owned by a natural person at the date of vesting shall be divested by the President or such officer or agency as he may designate and carried in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as and upon such terms as the President or his designee may prescribe.

⁷ Title II added by Public Law 285, 84th Cong., approved August 9, 1955 (69 Stat. 562): 22 U.S.C. §§ 1631-1631n (1964).

(c) The determination under this section that any vested property was not directly owned by a natural person at the date of vesting shall be within the sole discretion of the President or his designee and shall not be subject to review by any court.

(d) The President or his designee may require any person to furnish, in the form of reports or otherwise, complete information, including information with regard to past transactions, relative to any property blocked under Executive Order 8389 of April 10, 1940, as amended, or as may be otherwise necessary to enforce the provisions of this section; and the President or his designee may require of any person the production of any books of account, records, contracts, letters, memoranda, or other papers relative to such property or as may be otherwise necessary to enforce the provisions of this section.

Sec. 203. Whenever shares of stock or other beneficial interest in any corporation, association, or company or trust are vested in any officer or agency designated by the President under this title, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel such shares of stock or other beneficial interest upon its, his, or their books and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the designee of the President, or otherwise as such designee shall require.

Sec. 204. Any vesting order, or other order or requirement issued pursuant to this title, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of such property as may be covered by such order or requirement; and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment so filed, registered, or recorded.

Sec. 205. Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Sec. 206. The district courts of the United States are given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this title, with a right of appeal from the final order or decree of such court as provided in sections 1252, 1254, 1291, and 1292 of title 28, United States Code.

Sec. 207. (a) Any person who has not filed a notice of claim under subsection (b) of this section may institute a suit in equity for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 202(a) and held by such designee. Such suit, to which said designee shall be made a party defendant, shall be instituted in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which the claimant resides, or, if a corporation, where it has its principal place of business, by the filing of a complaint which alleges—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owner by inheritance, devise, or bequest.

If the court finds in favor of the claimant, it shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of such property, or the net proceeds thereof, held by said designee or the portion thereof to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such property, or, if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) * Any person who has not instituted a suit under the provisions of subsection (a) of this section may file a notice of claim under oath for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 202(a) and held by such designee. Such notice of claim shall be filed with said designee and in such form and containing such particulars as said designee shall require. Said designee may return any property so claimed, or the net proceeds thereof, whenever he shall determine—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owner by inheritance, devise, or bequest.

Any person whose claim is finally denied in whole or in part by said designee may obtain review of such denial by filing a petition therefor in the United States Court of Appeals for the District of Columbia Circuit. Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy shall forthwith be transmitted to the said designee by the clerk of the court. Within forty-five days after receipt of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall file with the court the record of the proceedings with respect to such claim, as provided in section 2112 of title 28, United States Code. The court may enter judgment affirming the order of the designee; or upon finding that such order is not in accordance with law or that any material findings upon which such order is based are unsupported by substantial evidence, may enter judgment modifying or setting aside the order in whole or in part, and (1) directing a return of all or part of the property claimed, or (2) remanding the claim for further administrative proceedings thereon. If a notice of claim is filed under this subsection, the property which is the subject of such claim, or, if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final order of said designee or any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until a final order of said designee or a final judgment or decree shall be entered against the claimant, or the claim or suit otherwise terminated.

(c) The sole relief and remedy of any person having any claim to any property vested pursuant to section 202(a) shall be that provided by the terms of subsection (a) or (b) of this section, and in the event of the liquidation by sale or otherwise of such property, shall be limited to and enforced against the net proceeds received therefrom and held by the designee of the President. The claim of any person based on his ownership of shares of stock or other proprietary interest in a corporation which was the owner of property at the date of vesting thereof under section 202(a) shall be allowable under subsection (a) or (b) of this section if 25 per centum or more of the outstanding capital stock or other proprietary interest in the corporation was owned at such date by nationals of countries other than Bulgaria, Hungary, Rumania, Germany, or Japan. But no such claim of a national of a foreign country shall be satisfied except after certification by the Department of State that the country of the national accords protection to nationals of the United States in similar types of cases.

(d) The designee of the President may retain or recover from any property, or the net proceeds thereof, returned pursuant to subsection (a) or (b) of this section an amount not exceeding that expended or incurred by him for the conservation, preservation, or maintenance of such property or proceeds.

Sec. 208. (a) Any property vested in the designee of the President pursuant to section 202(a), or the net proceeds thereof, shall be equitably applied by such designee in accordance with this section to the payment of debts owed by the person who owned such property immediately prior to its vesting in such designee. No debt claim shall be allowed under this section—

(1) if it is asserted against Bulgaria, Hungary, or Rumania (including the government or any political subdivisions, agencies, or instrumentalities thereof); or

* Amended by section 23 of Public Law 85-791, approved August 28, 1958 (72 Stat. 951).

(2) if it is based upon an obligation expressed or payable in any currency other than the currency of the United States; or

(3) if it was not due and owing—

(A) on October 9, 1940, in the event the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Rumania;

(B) on March 4, 1941, in the event the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Bulgaria; or

(C) on March 13, 1941, in the event that the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Hungary.

Any defense to the payment of such claim which would have been available to the debtor shall be available to the designee, except that the period from and after December 7, 1941, shall not be included for the purpose of determining the applicability of any statute of limitations. Debt claims allowable under this section shall include only those of natural persons who were citizens of the United States at the dates their debtors became obligated to them; those of other natural persons who are and have been continuously since December 7, 1941, residents of the United States; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia; and those acquired by the designee of the President under this title. Successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

(b) The designee of the President under this title shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of one year from the date of the last vesting in the designee of the President of any property of a debtor in respect to whose debts the date is fixed. No debt shall be paid prior to the expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or proceeds in respect of which a suit or proceeding for return pursuant to this title is pending.

(c) The designee shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part. The determination of the designee that a claim is within either paragraph (1) or (2) of subsection (a) of this section shall be final and shall not be subject to judicial review, and such claim shall not be considered a debt claim for any purpose under this section.

(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property owned by the debtor immediately prior to its vesting in the designee of the President, as shall remain after deduction of (1) the amount of the expenses of the designee (including both expenses in connection with such property or proceeds thereof, and such portion as the designee shall fix of his other expenses), and of taxes, as defined in section 212, paid by the designee in respect of such property or proceeds; and (2) such amount, if any, as the designee may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the designee, ratable payments shall be made in accordance with subsection (g) of this section to the extent permitted by the money available and additional payments shall be made whenever the designee shall determine that substantial further money has become available, through liquidation of any such property or otherwise. The designee shall not be required, through any judgment of any court, levy of execution, or otherwise, to sell or liquidate any property vested in him, for the purpose of paying or satisfying any debt claim.

(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) of this section, payment may be made, the designee shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim

is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the designee's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the designee as defendant. Such complaint shall be served on the designee. The designee, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the designee or introduced into the record by him, and the determination of the designee with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the designee, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the designee's determination, and directing payment in the amount, if any, which it finds due.

(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) of this section, payment may be made, the designee shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the designee shall assign priorities in accordance with subsection (g) of this section. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the designee as defendant. A copy of such complaint shall be served upon the designee and on each claimant named in the schedule. The designee, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the designee or introduced into the record by him, any findings or other determinations made by the designee with respect thereto, and the schedule prepared by the designee. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the designee or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the designee pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the designee and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) of this section, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed \$600; (2) claims entitled to priority under sections 3466 and 3468 of the Revised Statutes (31 U.S.C., secs. 191 and 193), except as provided in subsection (h) of this section; (3) all other claims for services rendered; for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) of this section, payment may be made permits payment in full of all allowed claims in every prior class.

(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the designee of the President under this title.

(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property vested in the designee under section 202(a), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be insti-

tuted, prosecuted, or further maintained except in conformity with this section. No person asserting any interest, right, or title in any property or proceeds acquired by the designee shall be barred from proceeding pursuant to this title for the return thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or proceeds be deemed to have been waived solely by reason of such proceeding. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property from the designee shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property prior to its vesting in the designee. Payment by the designee to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

Sec. 209. The officer or agency designated by the President under this title to entertain claims under section 207(b) and section 208 shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpoenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by section 207(b) and section 208 may be exercised through subordinate officers designated by such officer or agency.

Sec. 210. No suit may be instituted pursuant to section 207(a) after the expiration of one year from the date of vesting of the property in respect of which relief is sought. No return may be made pursuant to section 207(b) unless notice of claim has been filed within one year from the date of vesting of the property in respect of which the claim is filed.

Sec. 211. No property or proceeds shall be returned under this title, nor shall any payment be made or judgment awarded in respect of any property vested in any officer or agency designated by the President under this title unless satisfactory evidence is furnished to said designee, or the court, as the case may be, that the aggregate of the fees to be paid to all agents, attorneys at law or in fact, or representatives, for services rendered in connection with such return or payment or judgment does not exceed 10 per centum of the value of such property or proceeds or of such payment. Any agent, attorney at law or in fact, or representative, believing that the aggregate of the fees should be in excess of such 10 per centum may, in the case of any return of, or the making of any payment in respect of, such property or proceeds by the President or such officer or agency as he may designate, petition the district court of the United States for the district in which he resides for an order authorizing fees in excess of 10 per centum and shall name such officer or agency as respondent. The court hearing such petition or a court awarding any judgment in respect of any such property or proceeds, as the case may be, shall approve an aggregate of fees in excess of 10 per centum of the value of such property or proceeds only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess. Any person accepting any fee in excess of an amount approved under this section, or retaining for more than thirty days any portion of a fee, accepted prior to such approval, in excess of the fee as approved, shall be guilty of a violation of this title.

Sec. 212. (a) The vesting in any officer or agency designated by the President under this title of any property or the receipt by such designee of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period before or after such vesting.

(b) The officer or agency designated by the President under this title shall, notwithstanding the filing of any claim or the institution of any suit under this title, pay any tax incident to any such property, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, earnings, increment, or proceeds are held by such designee, unless they are returned pursuant to this title without payment of such tax by the designee. Every such tax shall be paid by the designee to the same extent, as nearly as may be deemed practicable, as though the property had not been vested, and shall be paid only out of the property, or earnings, increment, or proceeds thereof,

to which they are incident or out of other property acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or the earnings, increment, or proceeds thereof while held by the designee except with his consent. Where any property is transferred, otherwise than pursuant to section 207(a) or 207(b) hereof, the designee may transfer the property free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property in the hands of the designee.

(c) Subject to the provisions of subsection (b) of this section, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the designee with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessments, collection, refund, or credit of Federal taxes shall be suspended with respect to any vested property or the earnings, increment, or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate, and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the designee.

Sec. 213. Prior to covering the net proceeds of liquidation of any property into the Treasury pursuant to section 202(a), the designee of the President under this title shall determine—

(1) the amount of his administrative expenses attributable to the performance of his functions under this title with respect to such property and the proceeds thereof. The amounts so determined, together with an amount not exceeding that expended or incurred for the conservation, preservation, or maintenance of such property and the proceeds thereof, and for taxes in respect of same, shall be deducted and retained by the designee from the proceeds otherwise covered into the Treasury; and

(2) that the time for the institution of a suit under section 207(a), for the filing of a notice of claim under section 207(b), and for the filing of debt claims under section 208 has elapsed.

The determinations of the designee under this section shall be final and conclusive.

Sec. 214. No property conveyed, transferred, assigned, delivered, or paid to the designee of the President under this title, or the net proceeds thereof, shall be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court, except as provided in this title.

Sec. 215. Whoever shall willfully violate any provision of this title or any rule or regulation issued hereunder, and whoever shall willfully violate, neglect, or refuse to comply with an order of the President or of a designee of the President under this title, issued in compliance with the provisions of this title shall be fined not more than \$5,000, or, if a natural person, imprisoned for not more than five years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both.

Title III ⁹

H.R. 6382

Claims Against Bulgaria, Hungary, Rumania, Italy, and the Soviet Union

Sec. 301. As used in this title the term—

(1) "Person" means a natural person, partnership, association, other unincorporated body, corporation, or body politic.

⁹ Title III added by Public Law 285, 84th Cong., approved August 9, 1955 (69 Stat. 570); 22 U.S.C. §§ 1641-1641q (1964).

(2) "National of the United States" means (A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens.

(3) "Treaty of peace", with respect to a country, means the treaty of peace with that country signed at Paris, France, February 10, 1947, which came into force between that country and the United States on September 15, 1947.

(4) "Memorandum of Understanding" means the Memorandum of Understanding between the United States and Italy regarding Italian assets in the United States and certain claims of nationals of the United States, signed at Washington, District of Columbia, August 14, 1947 (61 Stat. 3962).

(5) "Soviet Government" means the Union of Soviet Socialist Republics, including any of its present or former constituent republics, other political subdivisions, and any territories thereof, as constituted on or prior to November 16, 1933.

(6) "Litvinov Assignment" means (A) the communication dated November 16, 1933, from Maxim Litvinov to President Franklin D. Roosevelt, wherein the Soviet Government assigned to the Government of the United States amounts admitted or found to be due it as the successor of prior governments of Russia, or otherwise, preparatory to a final settlement of the claims outstanding between the two Governments and the claims of their nationals; (B) the communication dated November 16, 1933, from President Franklin D. Roosevelt to Maxim Litvinov, accepting such assignment; and (C) the assignments executed by Serge Ughet on August 25, 1933, and November 15, 1933, assigning certain assets to the Government of the United States.

(7) "Russian national" includes any corporation or business association organized under the laws, decrees, ordinances, or acts of the former Empire of Russia or of any government successor thereto, and subsequently nationalized or dissolved or whose assets were taken over by the Soviet Government or which was merged with any other corporation or organization by the Soviet Government.

(8) "Commission" means the Foreign Claims Settlement Commission of the United States, established pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).

(9) "Property" means any property, right, or interest.

Sec. 302.¹⁰ There are hereby created in the Treasury of the United States five funds to be known as the Bulgarian Claims Fund, the Hungarian Claims Fund, the Rumanian Claims Fund, the Italian Claims Fund, and the Soviet Claims Fund. The Secretary of the Treasury shall cover into each of the Hungarian, Rumanian, and Bulgarian Claims Funds, the funds attributable to the respective country or its nationals covered into the Treasury pursuant to subsections (a) and (b) of section 202 of this Act. The Secretary of the Treasury shall cover into the Italian Claims Fund the sum of \$5,000,000 paid to the United States by the Government of Italy pursuant to article II of the Memorandum of Understanding. The Secretary shall cover into the Treasury the funds collected by the United States pursuant to the Litvinov Assignment (including postal funds due prior to November 16, 1933, to the Union of Soviet Socialist Republics because of money orders certified to that country for payment) and shall cover into the Soviet Claims Fund the funds so covered into the Treasury. The Secretary shall deduct from each claims fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Department in the administration of this title. Such deduction shall be made before any payment is made out of such fund under section 310. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

Sec. 303. The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and

¹⁰ See section 1 (c) of Public Law 1007, 84th Cong., approved August 6, 1956 (70 Stat. 1072).

amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to—

(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania. Awards under this paragraph shall be in amounts not to exceed two-thirds of the loss or damage actually sustained;

(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of nationals of the United States in Bulgaria, Hungary, and Rumania; and

(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1941, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania, and which became payable prior to September 15, 1947.

Sec. 304.¹¹ The Commission shall receive and determine, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, the validity and amount of claims of nationals of the United States against the government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy. Upon payment of the principal amounts (without interest) of all awards from the Italian Claims Fund created pursuant to section 302 of this Act, the Commission shall determine the validity and amount of any claim under this section by any natural person who was a citizen of the United States on the date of enactment of this title and shall, in the event an award is issued pursuant to such claim, certify the same to the Secretary of the Treasury for payment out of remaining balances in the Italian Claims Fund in accordance with the provisions of section 310 of this Act, notwithstanding that the period of time prescribed in section 316 of this Act for the settlement of all claims under this section may have expired.

Sec. 305. (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of—

(1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds; and

(2) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

(b) Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

(c) The Commission shall give preference to the disposition of the claims referred to in paragraph (1) of subsection (a) of this section, over all other claims presented to it under this title.

Sec. 306. Within sixty days after the date of enactment of this title, or within sixty days after the date of enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later,

¹¹ Amended by section 2 of Public Law 85-604, approved August 8, 1958 (72 Stat. 531).

the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed under this title, which limit shall not be more than one year after such publication, except that with respect to claims under section 305 this limit shall not exceed six months.

Sec. 307. The amount of any award made pursuant to this title based on a claim of a national of the United States other than the national of the United States to whom the claim originally accrued shall not exceed the amount of the actual consideration last paid therefor either prior to January 1, 1953, or between that date and the filing of the claim, whichever is less.

Sec. 308. The Commission shall as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

Sec. 309. All payments authorized under this title shall be disbursed exclusively from the claims fund attributable to the country with respect to which the claims are allowed pursuant to this title. All amounts covered into the Treasury to the credit of the claims funds created by section 302 are hereby permanently appropriated for the making of the payments authorized under this title.

Sec. 310. (a) The Secretary of the Treasury shall make payments on account of awards certified by the Commission pursuant to this title as follows:

(1) Payment in full of the principal amount of each award made pursuant to section 305(a)(1) and each award of \$1,000 or less made pursuant to section 303 or 304;

(2) Payment in full of the principal amount of each award of \$1,000 or less made pursuant to section 305(a)(2);

(3) Payment in the amount of \$1,000 on account of the principal of each award of more than \$1,000 in amount made pursuant to section 303, 304, or 305(a)(2);

(4) After completing the payments under the preceding paragraphs of this subsection from any one fund, payments from time to time, in ratable proportions, on account of the then unpaid principal of all awards in the principal amount of more than \$1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution on account of such awards at the time such payments are made;

(5) After payment has been made in full of the principal amounts of all awards from any one fund, pro rata payments from the remainder of such fund then available for distribution on account of accrued interest on such awards as bear interest.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purposes of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant and payable from the same fund.

(d) With respect to any claim which, at the time of the award, is vested in persons other than the person to whom the claim originally accrued, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein; and all such claimants shall participate, in proportion to their indicated interests, in the payments provided by this section in all respects as if the award had been in favor of a single person.

Sec. 311. (a) If a corporation or other legal entity has a claim on which an award may be made under this title, no award may be made to any other person under this title with respect to such claim.

(b)¹² A claim based upon an interest, direct or indirect, in a corporation or other legal entity which directly suffered the loss with respect to which the claim is asserted, but which was not a national of the United States at

¹² Amended by section 3(a) of Public Law 85-604, approved August 8, 1958 (72 Stat. 531), which added last two sentences. Section 3(b) of Public Law 85-604 further provided:

"Any claim heretofore decided under subsection (b) of section 311 of the International Claims Settlement Act of 1949, as amended, prior to the date of enactment of this section, shall be reconsidered by the Foreign Claims Settlement Commission solely to redetermine its validity and amount by reason of the amendments made by this section."

the time of the loss, shall be acted upon without regard to the nationality of such legal entity if at the time of the loss at least 25 per centum of the outstanding capital stock or other beneficial interest in such entity was owned, directly or indirectly, by natural persons who were nationals of the United States. This subsection shall not be construed so as to exclude from eligibility a claim based upon a direct ownership interest in a corporation, association, or other entity, or the property thereof, for loss by reason of the nationalization, compulsory liquidation, or other taking of such corporation, association, or other entity by the Governments of Bulgaria, Hungary, Italy, Rumania, or the Soviet Government. Any such claim may be allowed without regard to the per centum of ownership vested in the claimant.

Sec. 312. No award shall be made under this title to or for the benefit of any person who voluntarily, knowingly, and without duress, gave aid or collaborated with or in any manner served any government hostile to the United States during World War II, or who has been convicted of a violation of any provision of chapter 115, of title 18, of the United States Code, or of any other crime involving disloyalty to the United States.

Sec. 313. Payment of any award made pursuant to section 303 or 305 shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim, or be construed to have divested any claimant, or the United States on his behalf, of any rights against the appropriate foreign government or national for the unpaid balance of his claim or for restitution of his property. All awards or payments made pursuant to this title shall be without prejudice to the claims of the United States against any foreign government.

Sec. 314. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

Sec. 315. There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their administrative expenses incurred in carrying out their functions under this title.

Sec. 316. The Commission shall complete its affairs in connection with the settlement of claims pursuant to section 305(a)(1) not later than two years, and all other claims pursuant to this title not later than four years, following the date of enactment of this title, or following the date of enactment of legislation making appropriations to the Commission for the payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

Sec. 317. (a) The total remuneration paid to all agents, attorneys-at-law or in fact, or representatives, for services rendered on behalf of any claimant in connection with any claim filed with the Commission shall not exceed 10 per centum of the total amount paid under this title on account of such claim, or such greater amount as may be determined pursuant to subsection (b) of this section. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration which, together with all remuneration paid to other persons on account of such services and of which he has notice, is in excess of the maximum permitted by this section, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both.

(b) Not later than three months after the Commission has completed its affairs in connection with the settlement of all claims payable from the fund from which an award is payable, any agent, attorney-at-law or in fact, or representative who believes that the total remuneration for services rendered in connection with the claim upon which such award is made should exceed the maximum otherwise permitted by this section may, pursuant to such procedure as the Commission shall prescribe by regulation, petition the Commission for an order authorizing the payment of remuneration in excess of such maximum. The Commission shall issue such an order only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess; and such order shall state the

amount of the excess which may so be paid. The determination of the Commission in ruling upon such petition shall be within the sole discretion of the Commission and shall not be subject to review by any court.

Sec. 318. The following provisions of title I shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; and subsections (c), (d), (e) and f) of section 7.

Title IV¹³

S. 3557

Claims Against Czechoslovakia

Sec. 401. As used in this title—

(1) "National of the United States" means (A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens. (2) "Commission" means the Foreign Claims Settlement Commission of the United States, established, pursuant to Reorganization Plan Number 1 of 1954 (68 Stat. 1279). (3) "Property" means any property, right, or interest.

Sec. 402. (a) The Secretary of the Treasury is directed to hold, in an account in the Treasury of the United States, the net proceeds of the sale of certain Czechoslovakian steel mill equipment heretofore blocked and sold in the United States by order of the Secretary of the Treasury under authority of Executive Order Numbered 9193, dated July 6, 1942 (7 F.R. 5205, July 9, 1942).

(b) There is hereby created in the Treasury of the United States a fund to be designated the Czechoslovakian Claims Fund, for the payment of unsatisfied claims of nationals of the United States against Czechoslovakia as authorized in this title.

(c) If, within one year following the date of enactment of this title, the Government of Czechoslovakia voluntarily settles with and pays to the Government of the United States a sum in payment of claims of United States nationals against Czechoslovakia, all moneys held pursuant to subsection (a) of this section shall be disposed of in accordance with the terms of the settlement agreement with Czechoslovakia and applicable provisions of this title and the sum paid by Czechoslovakia shall be covered into the Czechoslovakian Claims Fund.

(d) Upon the expiration of one year after the date of enactment of this title if no settlement with Czechoslovakia of the type specified in subsection (c) of this section has occurred, all moneys held pursuant to subsection (a) of this section except amounts held in reserve pursuant to section 403 of this title, shall be covered into the Czechoslovakian Claims Fund.

(e) The Secretary of the Treasury shall deduct from the Czechoslovakian Claims Fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Department in the administration of this title. The amount so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(f) After the deduction for administrative expenses pursuant to subsection (e) of this section, and after payment of awards certified pursuant to section 410 of this title, the balance remaining in the Fund, if any, shall be paid to Czechoslovakia in accordance with instructions to be provided by the Secretary of State.

Sec. 403. No judicial relief or remedy shall be available to any person asserting a claim against the United States or any officer or agent thereof with respect to any action taken under this title, or any other claim for or on account of the property or proceeds described in section 402 of this title, or for any other action taken with respect thereto except to the extent that the action complained of constitutes a taking of private property with-

¹³ Title IV added by Public Law 85-604, approved August 8, 1958 (72 Stat. 527); 22 U.S.C. §§ 1642-1642p (1964).

out just compensation, and to such extent the sole judicial relief and remedy available shall be an action brought against the United States in the United States Court of Claims which action must be brought within one year of the date of enactment of this title or it shall be forever barred; and any action so brought shall receive a preference over all actions which themselves are not given preference by statute. No other court shall have original jurisdiction to consider any such claim by mandamus or otherwise. If any action is brought pursuant to this section the Secretary of the Treasury shall set aside an appropriate reserve in the account containing the moneys held pursuant to subsection (a) of section 402 of this title. Such reserve shall be retained pending a final determination of all issues raised in the action and recovery in any such action shall be limited to and paid out of the moneys so reserved. After a final determination of all issues raised in the action and payment of any judgment against the United States entered pursuant thereto, any balance no longer required to be held in reserve shall be disposed of in accordance with the provisions of subsection (d) of section 402 of this title. Nothing in this section shall be construed to create (1) any liability against the United States for any action taken pursuant to section 404 of this title, (2) any liability against the United States in favor of the Government of Czechoslovakia, any agency or instrumentality thereof or any person who is an assignee or successor in interest thereto, or (3) any other liability against the United States.

Sec. 404. The Commission shall determine in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein owned at the time by nationals of the United States, subject, however, to the terms and conditions of an applicable claims agreement, if any, concluded between the Governments of Czechoslovakia and the United States within one year following the date of enactment of this title. In making the determination with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission is authorized to accept the fair or proved value of the said property, right, or interest as of a time when the property or business enterprise taken, was last operated, used, managed, or controlled by the national or nationals of the United States asserting the claim irrespective of whether such date is prior to the actual date of nationalization or taking by the Government of Czechoslovakia.

Sec. 405. A claim under section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

Sec. 406. (a) A claim under section 404 of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall be denied.

(b) A claim under section 404 of this title, based upon a direct ownership interest in a corporation, association, or other entity for loss by reason of the nationalization or other taking of such corporation, association, or other entity, or the property thereof, shall be allowed, subject to other provisions of this title, if such corporation, association, or other entity on the date of the nationalization or other taking was not a national of the United States, without regard to the per centum of ownership vested in the claimant in any such claim.

(c) A claim under section 404 of this title, based upon an indirect ownership interest in a corporation, association, or other entity for loss by reason of the nationalization or other taking of such corporation, association, or other entity, or the property thereof, shall be allowed, subject to other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such nationalization or other taking was vested in nationals of the United States.

(d) Any award on a claim under subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant bears to the entire ownership interest thereof.

Sec. 407. In determining the amount of any award by the Commission there shall be deducted all amounts the claimant has received from any source on account of the same loss or losses with respect to which such award is made.

Sec. 408. With respect to any claim under section 404 of this title which, at the time of the award, is vested in persons other than the person by whom the loss was sustained, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in the payments authorized by this title in all respects as if the award had been in favor of a single person.

Sec. 409. No award shall be made on any claim under section 404 of this title to or for the benefit of (1) any person who has been convicted of a violation of any provision of chapter 115, title 18, of the United States Code, or of any other crime involving disloyalty to the United States, or (2) any claimant whose claim under this title is within the scope of title III of this Act.

Sec. 410. The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

Sec. 411. Within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later, the Commission shall give public notice by publication in the Federal Register of the time when, and the limit of time within which claims may be filed, which limit shall not be more than twelve months after such publication.

Sec. 412. The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than three years following the final date for the filing of claims as provided in section 411 of this title or following the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

Sec. 413. (a) The Secretary of the Treasury is authorized and directed, out of the sums covered into the Czechoslovakian Claims Fund, to make payments on account of awards certified by the Commission pursuant to this title as follows and in the following order of priority:

(1) Payment in the amount of \$1,000 or in the amount of the award, whichever is less.

(2) Thereafter, payments from time to time on account of the unpaid balance of each remaining award made pursuant to this title which shall bear to such unpaid balance the same proportion as the total amount in the fund available for distribution at the time such payments are made bears to the aggregate unpaid balance of all such awards.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purpose of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant.

(d) If any person to whom any payment is to be made pursuant to this title is deceased or is under a legal disability, payment shall be made to his legal representative, except that if any payment to be made is not over \$1,000 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates.

(e) Subject to the provisions of any claims agreement hereafter concluded between the Governments of Czechoslovakia and the United States, payment of any award pursuant to this title shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim, or be construed to have divested any claimant, or the United States on his behalf, of any rights against any foreign government for the unpaid balance of his claim.

Sec. 414. No remuneration on account of services rendered on behalf of any claimant in connection with any claim filed with the Commission under

this title shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both.

Sec. 415. The Secretary of State is authorized and directed to transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

Sec. 416. To the extent they are not inconsistent with the provisions of this title, the following provisions of title I shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; subsections (c), (d), (e), and f) of section 7.

Sec. 417. There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their administrative expenses incurred in carrying out their functions under this title.

Title V of the International Claims Settlement Act of 1949¹

H.R. 12259 and S. 3675

Purpose of Title

Sec. 501.² It is the purpose of this title to provide for the determination of the amount and validity of claims against the Government of Cuba, or the Chinese Communist regime,³ which have arisen since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,⁴ out of nationalization, expropriation, intervention or other takings of, or special measures directed against, property of nationals of the United States, and claims for disability or death of nationals of the United States arising out of violations of international law by the Government of Cuba, or the Chinese Communist regime,⁵ in order to obtain information concerning the total amount of such claims against the Government of Cuba, or the Chinese Communist regime,⁶ on behalf of nationals of the United States. This title shall not be construed as authorizing an appropriation or as any intention to authorize an appropriation for the purpose of paying such claims.

Definitions

Sec. 502. For the purposes of this title:

(1) The term "national of the United States," means (A) a natural person who is a citizen of the United States, or (B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens.

(2) The term "Commission" means the Foreign Claims Settlement Commission of the United States.

(3) The term "property" means any property, right, or interest, including any leasehold interest, and debts owed by the Government of Cuba or the Chinese Communist regime⁷ or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime⁸ and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime.⁹

(4) The term "Government of Cuba" includes the government of any political subdivision, agency, or instrumentality thereof.

¹ Title V was added by Public Law 88-666 (78 Stat. 1110), approved October 16, 1964. Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, amended Title V to provide for the determination of the amounts of claims of nationals of the United States against the Chinese Communist regime.

² This section was amended by sec. 1 of Public Law 89-262 (79 Stat. 988), approved October 19, 1965, by striking out "which have arisen out of debts for merchandise furnished or services rendered by nationals of the United States without regard to the date on which such merchandise was furnished or services were rendered or".

³ This section was amended by sec. 1 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

⁴ This section was amended by sec. 1 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime," after "since January 1, 1959,".

⁵ This section was amended by sec. 1 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

⁶ Ibid.

⁷ This section was amended by sec. 2 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "or the Chinese Communist regime" after "the Government of Cuba" at each place it appears in such section.

⁸ Ibid.

⁹ Ibid.

(5) The term "Chinese Communist regime" means the so-called Peoples Republic of China, including any political subdivision, agency, or instrumentality thereof.¹⁰

Receipt of Claims

Sec. 503.(a)¹¹ The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba, or the Chinese Communist regime,¹² arising since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,¹³ for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States, if such claims are submitted to the Commission within such period specified by the Commission by notice published in the Federal Register (which period shall not be more than eighteen months after such publication) within sixty days after the enactment of this title or sixty days after the enactment of the amendments made thereto with respect to claims against the Chinese Communist regime,¹⁴ or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions with respect to each respective claims program authorized,¹⁵ under this title, whichever date is later. In making the determination with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to, (i) fair market value, (ii) book value, (iii) going concern value, or (iv) cost of replacement.

(b) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba, or the Chinese Communist regime,¹⁶ arising since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,¹⁷ for disability or death resulting from actions taken by or under the authority of the Government of Cuba, or the Chinese Communist regime,¹⁸ if such claims are submitted to the Commission within the period established by the Commission under subsection (a), or within six months after the date the claims first arose (as determined by the Commission), whichever date last occurs.

¹⁰ This paragraph was added by sec. 2 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966.

¹¹ This section was amended by sec. 2 of Public Law 89-262 (79 Stat. 988), approved October 19, 1965, by striking out "arising out of debts for merchandise furnished or services rendered by nationals of the United States without regard to the date on which such merchandise was furnished or services were rendered or".

¹² This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

¹³ This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime," after "since January 1, 1959,".

¹⁴ This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "or sixty days after the enactment of the amendments made thereto with respect to claims against the Chinese Communist regime," after "within sixty days after the enactment of this title".

¹⁵ This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "with respect to each respective claims program authorized," after "carrying out its functions".

¹⁶ This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

¹⁷ This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime," after "since January 1, 1959,".

¹⁸ This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

Ownership of Claims

Sec. 504. (a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

(b) A claim for disability under section 503(b) may be considered if it is filed by the disabled person or by his successors in interest; and a claim for death under section 503(b) may be considered if filed by the personal representative of decedent's estate or by a person or persons for pecuniary losses and damage sustained on account of such death. A claim shall not be considered under this section unless the disabled or deceased person was a national of the United States at the time of injury or death and if considered, shall be considered only to the extent the claim has been held by a national or nationals of the United States continuously until the date of filing with the Commission.

Corporate Claims

Sec. 505. (a) A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba, or the Chinese Communist regime.¹⁹

(b) A claim under section 503(a) of this title based upon a direct ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, if such corporation, association, or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 503(a) of this title based upon an indirect ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States.

(d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

Offsets

Sec. 506.²⁰ In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

Action of Commission With Respect to Claims

Sec. 507. (a) The Commission shall certify to each individual who has filed a claim under this title the amount determined by the Commission to be the loss or damage suffered by the claimant which is covered by this title. The Commission shall certify to the Secretary of State such amount and the basic information underlying that amount, together with a statement of the evidence relied upon and the reasoning employed in reaching its decision.

(b) The amount determined to be due on any claim of an assignee who

¹⁹ This sentence was added by sec. 3 of Public Law 89-262 (79 Stat. 988), approved October 19, 1965. The sentence was amended by sec. 4 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by adding to the end thereof a comma and the following: "or the Chinese Communist regime."

²⁰ This section was amended by sec. 4 of Public Law 89-262 (79 Stat. 988), approved October 19, 1965, by striking out "": *Provided*, That the deduction of such amounts shall not be construed as divesting the United States of any rights against the Government of Cuba for the amounts so deducted".

acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

Transfer of Records

Sec. 508. The Secretary of State shall transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

Application of Other Laws

Sec. 509. To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of this Act shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; subsection (f) of section 7.

Settlement Period

Sec. 510. The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than three years following the final date for the filing of claims as provided in section 503(a) of this title or following the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions with respect to each respective claims program authorized under this title, whichever date is later.²¹

Appropriations

Sec. 511.²² There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission to pay its administrative expenses incurred in carrying out its functions under this title.

Fees for Services

Sec. 512. No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum of so much of the total amount of such claim, as determined under this title, as does not exceed \$20,000, plus 5 per centum of so much of such amount, if any, as exceeds \$20,000. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both.

Separability

Sec. 513. If any provision of this Act, or the application thereof to any person or circumstances, shall be held invalid, the remainder of the Act, or the application of such provision to other persons or circumstances, shall not be affected.

Note.—The provisions of title I of the International Claims Settlement Act of 1949 made applicable to title V by section 509 above read as follows:

“SEC. 4 . . .

“(a) . . .

“(b) The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. In addition, the Commission is authorized and directed to mail a similar notice to the last-known address of each person appearing in the records of the Department of State as having indicated an intention of filing a claim with respect to a matter concerning which the Commission has jurisdiction under this title. All decisions shall be upon such

²¹ This section was amended by sec. 5 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting “with respect to each respective claims program authorized” after “carrying out its functions”.

²² Sec. 11 (42 U.S.C. 1643j) of this Act, as added by Public Law 88-666, 78 Stat. 1118, October 16, 1964, was amended by sec. 5 of Public Law 89-262, 79 Stat. 988, approved October 19, 1965.

evidence and written legal contentions as may be presented within such period as may be prescribed therefor by the Commission, and upon the results of any independent investigation of cases which the Commission may deem it advisable to make. Each decision by the Commission pursuant to this title shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered.

“(c) Any member of the Commission, or any employee of the Commission, designated in writing by the Chairman of the Commission, may administer oaths and examine witnesses. Any member of the Commission may require by subpoena the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, records, correspondence, and other evidence, from any place in the United States at any designated place of inquiry or of hearing. The Commission is authorized to contract for the reporting of inquiries or of hearings. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpoena, the aid of any district court of the United States, as constituted by chapter 5 of title 28, United States Code (28 U.S.C. 81 and the following), and the United States court of any Territory or other place subject to the jurisdiction of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of such books, papers, documents, records, correspondence, and other evidence. Any such court within the jurisdiction of which the inquiry or hearing is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

“(d) The Commission may order testimony to be taken by deposition in any inquiry or hearing pending before it at any stage of such proceeding or hearing. Such depositions may be taken, under such regulations as the Commission may prescribe, before any person designated by the Commission and having power to administer oaths. Any person may be compelled to appear and depose, and to produce books, papers, documents, records, correspondence, and other evidence in the same way as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as herein-above provided. If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer, or by an officer or employee of the Commission, or other person commissioned by the Commission, or under letters rogatory issued by the Commission. Witnesses whose depositions are taken as authorized in this subsection, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

“(e) In addition to the penalties provided in title 18, United States Code, section 1001, any person guilty of any act, as provided therein, with respect to any matter under this title, shall forfeit all rights under this title, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same.

“(f) ...

“(g) ...

“(h) The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and grounds therefor, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission, or its duly authorized representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

“(i) ...

"(j) The Commission shall comply with the provisions of the Administrative Procedure Act of 1946 except as otherwise specifically provided by this title.

* * * * *

"SEC. 7....

"(a) ...

"(b) ...

"(c) ...

"(d) ...

"(e) ...

"(f) Nothing in this title shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government."

Agreement Between the Governments of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and Its Nationals

Signed and entered into force July 19, 1948

[T.I.A.S. 1803]

The Government of the United States of America and the Government of the Federal People's Republic of Yugoslavia, being desirous of effecting an expeditious and equitable settlement of claims of the United States of America and of its nationals against Yugoslavia, have agreed upon the following articles:

Article 1

(a) The Government of Yugoslavia agrees to pay, and the Government of the United States agrees to accept, the sum of \$17,000,000 United States currency in full settlement and discharge of all pecuniary claims of the Government of the United States against the Government of Yugoslavia, other than those arising from Lend-Lease and civilian supplies furnished as military relief, arising between September 1, 1939 and the date hereof, and in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect to property, which occurred between September 1, 1939 and the date hereof.

(b) Such payment by the Government of Yugoslavia shall be made to the Secretary of State of the United States of America within forty-five days after the signing of this Agreement.

(c) If upon adjudication made by the agency established or otherwise designated by the Government of the United States to adjudicate claims settled under this Agreement, it is found that the sum of \$17,000,000 payable by the Government of Yugoslavia under the provisions of the Agreement is in excess of the total sum of the claims determined to be valid, exclusive of any interest on such claims for the period beginning on the date of the payment referred to in paragraph (a) of this Article, plus the costs of adjudication, if any, not borne by the Claimants, the Government of the United States shall take the necessary steps to return such excess amount to the Government of Yugoslavia.

Article 2

The claims of nationals of the United States to which reference is made in Article 1 of this Agreement include those respecting property, and rights and interests in and with respect to property, which at the time of nationalization or other taking were:

(A) Directly owned by an individual who at such time was a national of the United States.

(B) Directly owned by a juridical person organized under the laws of the United States, or a constituent state or other political entity thereof, twenty percent or more of any class of the outstanding securities of which were at such time owned by individual nationals of the United States, directly, or indirectly through interests in one or more juridical persons of whatever nationality, or otherwise; or

(C) Indirectly owned by an individual within category (A) above, or by a juridical person within category (B) above, through interests, direct, or indirect in one or more juridical persons not within category (B) above, or otherwise.

Article 3

The claims of nationals of the United States to which reference is made in Article 1 of this Agreement do not include claims of individual nationals of the United States who did not possess such nationality at the time of the nationalization or other taking, which claims shall be subject to compensation by the Government of Yugoslavia, either by direct negotiations between that Government and the respective claimants or under compensation procedures prescribed by Yugoslav law.

Article 4

(a) Nothing herein contained shall constitute or be construed to constitute a waiver or release by the Government of Yugoslavia of any claims it or any Yugoslav national may have against any national of the United States.

(b) Claimants against the Government of Yugoslavia for compensation on account of the nationalization or other taking of enterprises, whose claims with respect to such nationalization or other taking are claims which are fully settled and discharged by this Agreement, receiving payment out of the funds to be paid by the Government of Yugoslavia under Article 1 of this Agreement shall be deemed to have undertaken to hold the Government of Yugoslavia, and the respective successor enterprises established by such Government, harmless against, and to have assumed, all debt obligations, including guarantees, of the enterprises of which such claimants were formerly the owners, to nationals of countries other than Yugoslavia, valid and subsisting as of the date hereof, incurred not for the benefit of such enterprises, but for the benefit of the owners thereof; but such assumption and undertaking shall be applicable only to such proportion of such obligations as such claimants' interests in such enterprises, at the date of the nationalization or other taking thereof, bore to the total ownership interests therein. Debt obligations, including guarantees, owing to nationals of countries other than Yugoslavia, incurred prior to the time such claimants became nationals of the United States, shall be deemed subject to such assumption and undertaking in the absence of proof that such obligations, including guarantees, were incurred for the benefit of such enterprises.

(c) The Government of Yugoslavia recognizes the obligation of the successor enterprises created by it with respect to debts valid under Yugoslav law which were incurred prior to the nationalization or other taking, for the benefit of the enterprises nationalized or otherwise taken, provided, however, that there shall be deemed fully settled and discharged all debt obligations of enterprises, nationalized or otherwise taken, owing to nationals of the United States whose claims against the Government of Yugoslavia with respect to the nationalization or other taking of such enterprises are claims which are fully settled and discharged by this agreement; and further that all debt obligations of such enterprises to juridical persons through which the claims of such claimants are derived shall be deemed settled and discharged in the same proportion as such claimants' interests in such enterprises, at the date of the nationalization or other taking thereof, bore to the total ownership interests therein.

Article 5

The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.^[1]

Article 6

The Government of Yugoslavia agrees not to employ or to permit the employment of trademarks, company names and trade names formerly used in Yugoslavia by enterprises, now nationalized, which were, at the time of

¹ Treaty Series 319; 22 Stat. 963.

such nationalization substantially owned, directly or indirectly, by nationals of the United States to the extent that such trademarks, company names and trade names are counterparts of trademarks, company names and trade names used elsewhere than in Yugoslavia by the former American owners of such enterprises, directly or through subsidiaries, or by their authority; provided, however, that nothing herein contained shall prejudice the right of the Government of Yugoslavia, or any national thereof, to employ such trademarks, company names and trade names with the consent of the former owners of such enterprises, or others authorized to permit the use thereof. The Government of Yugoslavia will take such measures as may be necessary and appropriate to prevent the use of such trademarks, company names and trade names within Yugoslavia, except with such consent or in connection with products imported into Yugoslavia with respect to which the use of such trademarks, company names and trade names is permitted by or on behalf of the former owners of such enterprises, or others authorized to permit the use thereof. This Agreement does not affect in any way the rights, if any, of nationals of the United States with respect to trademarks, trade names and company names which were used in Yugoslavia by enterprises which have been taken other than by nationalization.

Article 7

Claims of nationals of the United States for war damage to property which has not been nationalized or otherwise taken prior to the date hereof shall be treated not less favorably than those of nationals of Yugoslavia, but in no event less favorably than those of the nationals of any other country.

Article 8

The funds payable to the Government of the United States under Article 1 of this Agreement shall be distributed to the Government of the United States and among the several claimants, respectively, in accordance with such methods of distribution as may be adopted by the Government of the United States. Any determinations with respect to the validity or amounts of individual claims which may be made by the agency established or otherwise designated by the Government of the United States to adjudicate such claims shall be final and binding.

Article 9

(a) In the interests of an equitable distribution by the Government of the United States among the several claimants for participation in the amount to be paid by the Government of Yugoslavia in full settlement and discharge of claims in accordance with this Agreement, the Government of Yugoslavia will, upon the request of the Government of the United States, and to the extent possible, bearing in mind the wide-spread destruction of property and books and records in Yugoslavia caused by the war, furnish such information, including certified copies of books, records or other documents, as may be necessary or appropriate to support or refute, in whole or in part, any claim for participation in such amount, and to the same end will permit, in a manner consistent with Yugoslav law, the taking of depositions of such witnesses as may be requested by the Government of the United States.

(b) In the interest of protecting the Government of Yugoslavia from the possible assertion through third countries, or otherwise, of claims falling within the scope of this Agreement, the Government of the United States will supply to the Government of Yugoslavia, certified copies of such formal submissions as may be made by claimants to such agency as may be established or otherwise designated by the Government of the United States to adjudicate claims to participation in the funds to be paid by the Government of Yugoslavia pursuant to this Agreement and of the corresponding awards of such agency with respect thereto. A certified copy of each such submission and award will be supplied to the Government of Yugoslavia within a reasonable time after its receipt or announcement. Subject to such rules and regulations as may be established with respect to proceedings of such agency, the Government of the United States further agrees to make available to the Government of Yugoslavia, upon its request, certified copies of transcripts of any proceedings before such agency and certified copies of documents submitted to such agency in support or in refutation, in whole or in part, of any claim submitted thereto. Subject to such rules and regulations, and with

the consent of such agency, the Government of Yugoslavia may file briefs as *amicus curiae* with respect to any specific claims.

Article 10

(a) The Government of Yugoslavia shall authorize persons residing in Yugoslavia who are legally indebted to any individual, firm, or governmental agency in the United States, to meet such indebtedness on maturity.

(b) To the extent feasible, considering Yugoslav foreign exchange resources and regulations, and when necessary to effectuate the purposes of paragraph (a) of this Article, the Government of Yugoslavia shall permit the use of dollars by, or provide dollars to those Yugoslav residents legally owing dollar obligations arising from commercial transactions involving goods or services.

Article 11

The Government of Yugoslavia agrees to give sympathetic consideration to applications for transfers to the United States of deposits in banks of Yugoslavia and other similar forms of capital owned by nationals of the United States, where the amounts involved are small but which, in view of the circumstances, are of substantial importance to the persons requesting the transfers.

Article 12

The present Agreement shall come into force and effect upon the date of signature.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

Done at Washington in duplicate this nineteenth day of July, 1948.

For the Government of the United States of America:

G C MARSHALL

Secretary of State

of the United States of America

For the Government of the Federal People's Republic of Yugoslavia:

OBREN BLAGOJEVIC.

Deputy Minister of Finance

of the Federal People's Republic of Yugoslavia

Aide-Memoire

Upon the signature of the Agreement between the Governments of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States and Its Nationals, the necessary licenses will be issued by the Government of the United States unblocking Yugoslav assets, public and private, and enabling the Yugoslav Government freely to use, transfer or export the gold and other assets on deposit with the Federal Reserve Bank of New York in the name of the Government of Yugoslavia in excess of the amount to be paid to the United States pursuant to such Agreement. Concurrently, the Secretary of State will certify to the Federal Reserve Bank of New York the authority of the Yugoslav Ambassador to receive, control and dispose of such assets.

Upon the issuance of such licenses and certification, and in view of the assurances during the negotiations that the documents requested by the Federal Reserve Bank of New York, in its letter of November 30, 1945, [1] to the Yugoslav National Bank, will, in due course, be furnished by such Bank, the Federal Reserve Bank of New York will promptly execute the instructions of the Ambassador with respect to such assets.

All formalities with respect to the issuance of the necessary licenses and certification will be promptly accomplished, so that such assets will be at the free disposal of the Yugoslav Government for use, transfer or export within five days of the signature of the aforesaid Agreement.

J B K

Department of State,

Washington, July 19, 1948

¹ Not printed.

The Secretary of State to the Yugoslav Ambassador

The Secretary of State presents his compliments to His Excellency, the Ambassador of the Federal People's Republic of Yugoslavia and has the honor to inform the Ambassador that the United States Government understands from the Embassy's communication No. Pov. Br. 407 of April 2, 1946, that the Government of the Federal People's Republic of Yugoslavia recognizes among its other international obligations the dollar bonds issued or guaranteed by predecessor Yugoslav governments; and inquires whether the Ambassador would confirm this interpretation.

J B K

Department of State,
Washington, July 19, 1948

The Yugoslav Ambassador to the Secretary of State

EMBASSY OF THE FEDERAL PEOPLE'S
REPUBLIC OF YUGOSLAVIA
WASHINGTON

Pov. br. 767

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and has the honor to acknowledge the note of July 19, 1948, from the Secretary of State in which it was stated that the United States Government understands from this Embassy's communication No. Pov. Br. 407 of April 2, 1946, that the Government of the Federal People's Republic of Yugoslavia recognizes among its other international obligations, the dollar bonds issued or guaranteed by predecessor Yugoslav governments.

In his note of July 19, 1948, the Secretary of State inquires whether the Ambassador would confirm this interpretation.

The Ambassador of the Federal People's Republic of Yugoslavia confirms the interpretation of the United States Government of this Embassy's communication No. Pov. Br. 407 of April 2, 1946, and states that his Government will consider means of discharging such obligations when Yugoslavia's economic condition, seriously injured by the ravages of war, and her foreign exchange position permit.

WASHINGTON, D. C., July 19, 1948.

The Honorable

THE SECRETARY OF STATE
Washington, D.C.

S. N. K.

The Secretary of State to the Yugoslav Ambassador

The Secretary of State presents his compliments to His Excellency the Ambassador of the Federal People's Republic of Yugoslavia and has the honor to acknowledge the receipt of the Ambassador's note No. Pov. Br. 767, of July 19, 1948, reading as follows:

"The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and has the honor to acknowledge the note of July 19, 1948 from the Secretary of State in which it was stated that the United States Government understands from this Embassy's communication No. Pov. Br. 407 of April 2, 1946, that the Government of the Federal People's Republic of Yugoslavia recognizes among its other international obligations, the dollar bonds issued or guaranteed by predecessor Yugoslav governments.

"In his note of July 19, 1948, the Secretary of State inquires whether the Ambassador would confirm this interpretation.

"The Ambassador of the Federal People's Republic of Yugoslavia confirms the interpretation of the United States Government of this Embassy's communication No. Pov. Br. 407 of April 2, 1946, and states that his Government will consider means of discharging such obligations when Yugoslavia's economic condition, seriously injured by the ravages of war, and her foreign exchange position permit."

The Secretary of State has taken due note of the foregoing note of July 19, 1948, from the Ambassador of the Federal People's Republic of Yugoslavia.

DEPARTMENT OF STATE,
Washington, July 19, 1948

J B K

Claims Convention Between the United States and Panama

Signed January 26, 1950, entered into force October 11, 1950.

[T.I.A.S. 2129]

The United States of America and the Republic of Panama, animated by the desire to strengthen the bonds of friendship existing between them, and being desirous of adjusting certain pecuniary claims of each country against the other, have resolved to fix by means of a Convention the bases of settlement of such claims with a view to their prompt and just liquidation, and to this end have named as their Plenipotentiaries:

The President of the United States of America:

His Excellency Monnett B. Davis, Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Panama;

The President of the Republic of Panama:

His Excellency Doctor Carlos N. Brin, Minister of Foreign Relations of the Republic of Panama;

Who, after having communicated to each other their respective full powers, found to be in good and proper form, have agreed on the following articles:

Article I

The Government of the United States of America and the Government of the Republic of Panama recognize that it is most desirable for both countries to eliminate from their relations with each other any cause for difference and to dispose of, on an equitable basis and without reference to the legal aspect of the controversies, the following group of claims, which have been outstanding for some considerable time:

(a) The claims of the Republic of Panama against the United States of America, which were the subject of a recommendation of the Joint Land Commission, United States and Panama, with respect to damages caused by the fire which occurred in the Malambo section in the year 1906;

(b) The claims of the United States of America against the Republic of Panama for personal injuries sustained by six soldiers of the United States Army during disturbances which occurred in the city of Panama in the year 1915; and

(c) The claims of the United States of America against the Republic of Panama arising as a consequence of the judgment rendered by the Supreme Court of Justice of the Republic of Panama on October 20, 1931, through which there were declared as the property of the nation certain lands called El Encanto, which several nationals of the United States of America alleged that they acquired in good faith.

Article II

It is agreed that the claims mentioned in Article I of this Convention shall be settled as follows:

(a) The Government of the United States of America agrees to pay the Government of the Republic of Panama the sum of \$53,800.00 (fifty-three thousand eight hundred dollars), currency of the United States of America, with respect to property losses sustained by nationals of the Republic of Panama as a consequence of the fire occurring in the Malambo section in 1906;

(b) The Government of the Republic of Panama agrees to pay the Government of the United States of America the sum of \$3,156.00 (three thousand one hundred fifty-six dollars), currency of the United States of America, with respect to personal injuries sustained by six soldiers of the United States Army in the disturbances occurring in 1915; and

(c) The Government of the Republic of Panama agrees to pay the Government of the United States of America the sum of \$400,000.00 (four hundred thousand dollars), currency of the United States of America, with

respect to property losses suffered by several nationals of the United States of America in relation to the lands called El Encanto.

Article III

The Government of the Republic of Panama agrees to pay and the Government of the United States of America agrees to accept the amount of \$349,356.00 (three hundred forty-nine thousand three hundred fifty-six dollars), currency of the United States of America, as the net balance due the latter, in accordance with the provisions of Article II, as full and final adjustment and as full settlement of the claims mentioned in that Article. This amount will be remitted by the Government of the Republic of Panama to the Government of the United States of America, in Washington, D.C., in two payments of \$174,678.00 (one hundred seventy-four thousand six hundred seventy-eight dollars), currency of the United States of America, each, and the first payment is to be made in a period of six months after the exchange of the ratifications of this Convention, and the second payment one year after the first payment has been effected.

Article IV

The individual claims referred to in subparagraphs (b) and (c) of Article III of this Convention shall be finally adjudicated by an agency established or designated by the Government of the United States of America. If, upon such adjudication, such agency shall find that the sum of \$400,000.00 (four hundred thousand dollars) referred to in subparagraph (c) of Article II is in excess of the total sum of the claims encompassed by that subparagraph, and which may be determined to be valid, plus the cost of adjudication, if any, not borne by the claimants, the Government of the United States of America shall take the necessary steps to return such excess to the Government of the Republic of Panama.

Article V

With reference to the so-called El Encanto claims, the Government of the Republic of Panama expressly declares that, in agreeing to the settlement of those claims, it has not ignored or disregarded the decision rendered by the Supreme Court of the Republic of Panama in the litigation relating to the El Encanto lands, which judgment sets forth the legal aspect of the matter. In agreeing to the settlement of those claims, the Government of the Republic of Panama is prompted by reasons of strictest equity to make good the loss suffered by several nationals of the United States of America who acted in good faith in the acquisition of the lands to which reference is made.

With reference to the so-called Malambo fire claims, the Government of the United States of America declares that its agreement to effect settlement of those claims is prompted by similar considerations of equity and without reference to the question of liability.

Article VI

Upon the execution of the provisions of the present Convention, the Government of the United States of America and the Government of the Republic of Panama shall consider as reciprocally cancelled, renounced, and satisfied all claims referred to herein. Any other unsettled claims on behalf of nationals of either country against the government of the other country, whether arising under the provisions of agreements between the two countries or under general principles of international law, are not affected by the provisions of this Convention.

Article VII

For the purpose of assisting the Government of the United States of America in making a proper distribution to the respective nationals of the United States of America of the amount to be paid as provided for herein, the Government of the Republic of Panama will deliver to the Government of the United States of America any documents in its possession which may have a bearing upon the merits of the individual claims of such nationals.

Article VIII

This Convention shall be ratified and shall enter into force upon the exchange of ratifications which shall take place at Panama as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed and affixed their seals to the present Convention.

Done in duplicate, in Spanish and English, at Panama, this twenty-sixth day of January, 1950.

FOR THE UNITED STATES OF AMERICA:

MONNETT B. DAVIS

FOR THE REPUBLIC OF PANAMA:

CARLOS N. BRIN

Extract From the Treaty of Peace With Bulgaria

Signed February 10, 1947, and entered into force September 15, 1947.

[T.I.A.S. 1650]

* * * * *

Part VI

ECONOMIC CLAUSES

Article 23

1. In so far as Bulgaria has not already done so, Bulgaria shall restore all legal rights and interests in Bulgaria of the United Nations and their nationals as they existed on April 24, 1941, and shall return all property in Bulgaria of the United Nations and their nationals as it now exists.

2. The Bulgarian Government undertakes that all property, rights and interests passing under this Article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Bulgarian Government in connection with their return. The Bulgarian Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between April 24, 1941 and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Bulgarian authorities not later than twelve months from the coming into force of the Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.

3. The Bulgarian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.

4. (a) The Bulgarian Government shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Bulgaria, he shall receive from the Bulgarian Government compensation in levas to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to Bulgarian nationals.

(b) United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 8(a) of this Article, but which have suffered a loss by reason of injury or damage to property in Bulgaria, shall receive compensation in accordance with sub-paragraph (a) above. This compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such nationals in the corporation or association bear to the total capital thereof.

(c) Compensation shall be paid free of any levies, taxes or other charges. It shall be freely usable in Bulgaria but shall be subject to the foreign exchange control regulations which may be in force in Bulgaria from time to time.

(d) The Bulgarian Government shall accord to United Nations nationals the same treatment in the allocation of materials for the repair or rehabilitation of their property in Bulgaria and in the allocation of foreign exchange for the importation of such materials as applies to Bulgarian nationals.

(e) The Bulgarian Government shall grant United Nations nationals an indemnity in levas at the same rate as provided in subparagraph (a) above to compensate them for the loss or damage due to special measures applied to their property during the war, and which were not applicable to Bulgarian property. This sub-paragraph does not apply to a loss of profit.

5. All reasonable expenses incurred in Bulgaria in establishing claims, including the assessment of loss or damage, shall be borne by the Bulgarian Government.

6. United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts imposed on their capital assets in Bulgaria by the Bulgarian Government or any Bulgarian authority between the date of the Armistice and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

7. The owner of the property concerned and the Bulgarian Government may agree upon arrangements in lieu of the provisions of this Article.

8. As used in this Article:

(a) "United Nations nationals" means individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status at the date of the Armistice with Bulgaria.

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Bulgaria during the war, have been treated as enemy;

(b) "Owner" means the United Nations national, as defined in subparagraph (a) above, who is entitled to the property in question, and includes a successor of the owner, provided that the successor is also a United Nations national as defined in sub-paragraph (a). If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law;

(c) "Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all rights or interests of any kind in property.

* * * * *

Article 25

1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which at the coming into force of the present Treaty are within its territory and belong to Bulgaria or to Bulgarian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Bulgaria or Bulgarian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Bulgarian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned.

2. The liquidation and disposition of Bulgarian property shall be carried out in accordance with the law of the Allied or Associated Power concerned. The Bulgarian owner shall have no rights with respect to such property except those which may be given him by that law.

3. The Bulgarian Government undertakes to compensate Bulgarian nationals whose property is taken under this Article and not returned to them.

4. No obligation is created by this Article on any Allied or Associated Power to return industrial property to the Bulgarian Government or Bulgarian nationals, or to include such property in determining the amounts which may be retained under paragraph 1 of this Article. The Government of each of the Allied and Associated Powers shall have the right to impose such limitations, conditions and restrictions on rights or interests with respect to industrial property in the territory of that Allied or Associated Power, acquired prior to the coming into force of the present Treaty by the Government or nationals of Bulgaria, as may be deemed by the Government of the Allied or Associated Power to be necessary in the national interest.

5. The property covered by paragraph 1 of this Article shall be deemed to include Bulgarian property which has been subject to control by reason of a state of war existing between Bulgaria and the Allied or Associated Power having jurisdiction over the property, but shall not include:

(a) Property of the Bulgarian Government used for consular or diplomatic purposes;

(b) Property belonging to religious bodies or private charitable institutions and used for religious or charitable purposes;

(c) Property of natural persons who are Bulgarian nationals permitted to reside within the territory of the country in which the property is located or to reside elsewhere in United Nations territory, other than Bulgarian property which at any time during the war was subjected to measures not generally applicable to the property of Bulgarian nationals resident in the same territory;

(d) Property rights arising since the resumption of trade and financial relations between the Allied and Associated Powers and Bulgaria, or arising out of transactions between the Government of any Allied or Associated Power and Bulgaria since October 28, 1944;

(e) Literary and artistic property rights.

* * * * *

Article 27

1. The existence of the state of war shall not, in itself, be regarded as affecting the obligation to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the existence of the state of war, which became payable prior to the coming into force of the present Treaty, and which are due by the Government or nationals of Bulgaria to the Government or nationals of one of the Allied and Associated Powers or are due by the Government or nationals of one of the Allied and Associated Powers to the Government or nationals of Bulgaria.

2. Except as otherwise expressly provided in the present Treaty, nothing therein shall be construed as impairing debtor-creditor relationships arising out of pre-war contracts concluded either by the Government or nationals of Bulgaria.

Article 28

1. Bulgaria waives all claims of any description against the Allied and Associated Powers on behalf of the Bulgarian Government or Bulgarian nationals arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Bulgaria at the time, including the following:

(a) Claims for losses or damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers;

(b) Claims arising from the presence, operations or actions of forces or authorities of Allied or Associated Powers in Bulgarian territory;

(c) Claims with respect to the decrees or orders of Prize Courts of Allied or Associated Powers, Bulgaria agreeing to accept as valid and binding all decrees and orders of such Prize Courts on or after September 1, 1939, concerning Bulgarian ships or Bulgarian goods or the payment of costs;

(d) Claims arising out of the exercise or purported exercise of belligerent rights.

2. The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whatever may be the parties in interest. The Bulgarian Government agrees to make equitable compensation in levas to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Bulgarian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Bulgarian territory.

3. Bulgaria likewise waives all claims of the nature covered by paragraph 1 of this Article on behalf of the Bulgarian Government or Bulgarian nationals against any of the United Nations whose diplomatic relations with Bulgaria were broken off during the war and which took action in cooperation with the Allied and Associated Powers.

4. The waiver of claims by Bulgaria under paragraph 1 of this Article includes any claims arising out of actions taken by any of the Allied and Associated Powers with respect to Bulgarian ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising out of the Conventions on prisoners of war now in force.

Extract From the Treaty of Peace With Hungary

Signed February 10, 1947, and entered into force September 15, 1947.

[T.I.A.S. 1651]

* * *

Part VI

Economic Clauses

Article 26

1. In so far as Hungary has not already done so, Hungary shall restore all legal rights and interests in Hungary of the United Nations and their nationals as they existed on September 1, 1939, and shall return all property in Hungary of the United Nations and their nationals as it now exists.

2. The Hungarian Government undertakes that all property, rights and interests passing under this Article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Hungarian Government in connection with their return. The Hungarian Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between September 1, 1939, and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Hungarian authorities not later than twelve months from the coming into force of the Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.

3. The Hungarian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.

In the case of Czechoslovak nationals, this paragraph shall also include transfers after November 2, 1938, which resulted from force or duress or from measures taken under discriminatory internal legislation by the Hungarian Government or its agencies in Czechoslovak territory annexed by Hungary.

4. (a) The Hungarian Government shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Hungary, he shall receive from the Hungarian Government compensation in Hungarian currency to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to Hungarian nationals.

(b) United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 9 (a) of this Article, but which have suffered a loss by reason of injury or damage to property in Hungary, shall receive compensation in accordance with sub-paragraph (a) above. This compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such nationals in the corporation or association bear to the total capital thereof.

(c) Compensation shall be paid free of any levies, taxes or other charges. It shall be freely usable in Hungary but shall be subject to the foreign exchange control regulations which may be in force in Hungary from time to time.

(d) The Hungarian Government shall accord to United Nations nationals the same treatment in the allocation of materials for the repair or rehabilitation of their property in Hungary and in the allocation of foreign exchange for the importation of such materials as applies to Hungarian nationals.

(e) The Hungarian Government shall grant United Nations nationals an indemnity in Hungarian currency at the same rate as provided in sub-paragraph (a) above to compensate them for the loss or damage due to special measures applied to their property during the war, and which were not applicable to Hungarian property. This sub-paragraph does not apply to a loss of profit.

5. The provisions of paragraph 4 of this Article shall apply to Hungary in so far as the action which may give rise to a claim for damage to property in Northern Transylvania belonging to the United Nations or their nationals took place during the period when this territory was subject to Hungarian authority.

6. All reasonable expenses incurred in Hungary in establishing claims, including the assessment of loss or damage, shall be borne by the Hungarian Government.

7. United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts imposed on their capital assets in Hungary by the Hungarian Government or any Hungarian authority between the date of the Armistice and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

8. The owner of the property concerned and the Hungarian Government may agree upon arrangements in lieu of the provisions of this Article.

9. As used in this Article:

(a) "United Nations nationals" means individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status at the date of the Armistice with Hungary.

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Hungary during the war, have been treated as enemy;

(b) "Owner" means the United Nation, or the United Nations national as defined in sub-paragraph (a) above, entitled to the property in question, and includes a successor of the owner, provided that the successor is also a United Nation, or a United Nations national as defined in sub-paragraph (a). If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law;

(c) "Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all rights or interests of any kind in property.

10. The Hungarian Government recognizes that the Brioni Agreement of August 10, 1942, is null and void. It undertakes to participate with the other signatories of the Rome Agreement of May 29, 1923, in any negotiations having the purpose of introducing into its provisions the modifications necessary to ensure the equitable settlement of the annuities which it provides.

Article 27

1. Hungary undertakes that in all cases where the property, legal rights or interests in Hungary of persons under Hungarian jurisdiction have, since September 1, 1939, been the subject of measures of sequestration, confiscation or control on account of the racial origin or religion of such persons, the said property, legal rights and interests shall be restored together with their accessories or, if restoration is impossible, that fair compensation shall be made therefor.

2. All property, rights and interests in Hungary of persons, organisations or communities which, individually or as members of groups, were the object of racial, religious or other Fascist measures of persecution, and remaining heirless or unclaimed for six months after the coming into force

of the present Treaty, shall be transferred by the Hungarian Government to organisations in Hungary representative of such persons, organisations or communities. The property transferred shall be used by such organisations for purposes of relief and rehabilitation of surviving members of such groups, organisations and communities in Hungary. Such transfer shall be effected within twelve months from the coming into force of the Treaty, and shall include property, rights and interests required to be restored under paragraph 1 of this Article.

Extract From the Treaty of Peace With Rumania

Signed February 10, 1947, and entered into force September 15, 1947.

[T.I.A.S. 1649]

Part VI

Economic Clauses

Article 24

1. In so far as Roumania has not already done so, Roumania shall restore all legal rights and interests in Roumania of the United Nations and their nationals as they existed on September 1, 1939, and shall return all property in Roumania, including ships, of the United Nations and their nationals as it now exists.

If necessary, the Roumanian Government shall revoke legislation enacted since September 1, 1939, in so far as it discriminates against the rights of United Nations nationals.

2. The Roumanian Government undertakes that all property, rights and interests passing under this Article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Roumanian Government in connection with their return. The Roumanian Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between September 1, 1939, and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Roumanian authorities not later than twelve months from the coming into force of the Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.

3. The Roumanian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.

4. (a) The Roumanian Government shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Roumania, he shall receive from the Roumanian Government compensation in lei to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to Roumanian nationals.

(b) United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 9(a) of this Article, but which have suffered a loss by reason of injury or damage to property in Roumania, shall receive compensation in accordance with sub-paragraph (a) above. This compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such nationals in the corporation or association bear to the total capital thereof.

(c) Compensation shall be paid free of any levies, taxes or other charges. It shall be freely usable in Roumania but shall be subject to the foreign exchange control regulations which may be in force in Roumania from time to time.

(d) The Roumanian Government shall accord to United Nations nationals

the same treatment in the allocation of materials for the repair or rehabilitation of their property in Roumania and in the allocation of foreign exchange for the importation of such materials as applies to Roumanian nationals.

(e) The Roumanian Government shall grant United Nations nationals an indemnity in lei at the same rate as provided in sub-paragraph (a) above to compensate them for the loss or damage due to special measures applied to their property during the war, and which were not applicable to Roumanian property. This sub-paragraph does not apply to a loss of profit.

5. The provisions of paragraph 4 of this Article shall not apply to Roumania in so far as the action which may give rise to a claim for damage to property in Northern Transylvania belonging to the United Nations or their nationals took place during the period when this territory was not subject to Roumanian authority.

6. All reasonable expenses incurred in Roumania in establishing claims, including the assessment of loss or damage, shall be borne by the Roumanian Government.

7. United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts imposed on their capital assets in Roumania by the Roumanian Government or any Roumanian authority between the date of the Armistice and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

8. The owner of the property concerned and the Roumanian Government may agree upon arrangements in lieu of the provisions of this Article.

9. As used in this Article:

(a) "United Nations nationals" means individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status at the date of the Armistice with Roumania.

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Roumania during the war, have been treated as enemy;

(b) "Owner" means the United Nations national, as defined in sub-paragraph (a) above, who is entitled to the property in question, and includes a successor of the owner, provided that the successor is also a United Nations national as defined in sub-paragraph (a). If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law;

(c) "Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all rights or interests of any kind in property. Without prejudice to the generality of the foregoing provisions, the property of the United Nations and their nationals includes all seagoing and river vessels, together with their gear and equipment, which were either owned by United Nations or their nationals, or registered in the territory of one of the United Nations, or sailed under the flag of one of the United Nations and which, after September 1, 1939, while in Roumanian waters, or after they had been forcibly brought into Roumanian waters, either were placed under the control of the Roumanian authorities as enemy property or ceased to be at the free disposal in Roumania of the United Nations or their nationals, as a result of measures of control taken by the Roumanian authorities in relation to the existence of a state of war between members of the United Nations and Germany.

Article 25

1. Roumania undertakes that in all cases where the property, legal rights or interests in Roumania of persons under Roumanian jurisdiction have, since September 1, 1939, been the subject of measures of sequestration, confiscation or control on account of the racial origin or religion of such per-

sons, the said property, legal rights and interests shall be restored together with their accessories or, if restoration is impossible, that fair compensation shall be made therefor.

2. All property, rights and interests in Roumania of persons, organisations or communities which, individually or as members of groups, were the object of racial, religious or other Fascist measures of persecution, and remaining heirless or unclaimed for six months after the coming into force of the present Treaty, shall be transferred by the Roumanian Government to organisations in Roumania representative of such persons, organisations or communities. The property transferred shall be used by such organisations for purposes of relief and rehabilitation of surviving members of such groups, organisations and communities in Roumania. Such transfer shall be effected within twelve months from the coming into force of the Treaty, and shall include property, rights and interests required to be restored under paragraph 1 of this Article.

Extract From the Treaty of Peace With Italy

Signed February 10, 1947, and entered into force September 15, 1947.

[T.I.A.S. 1648]

* * *

Part VI

Claims Arising Out of the War

* * *

Section III—Renunciation of Claims by Italy

Article 76

1. Italy waives all claims of any description against the Allied and Associated Powers on behalf of the Italian Government or Italian nationals arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Italy at the time, including the following:

(a) Claims for losses or damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers;

(b) Claims arising from the presence, operations, or actions of forces or authorities of Allied or Associated Powers in Italian territory;

(c) Claims with respect to the decrees or orders of Prize Courts of Allied or Associated Powers, Italy agreeing to accept as valid and binding all decrees and orders of such Prize Courts on or after September 1, 1939, concerning Italian ships or Italian goods or the payment of costs;

(d) Claims arising out of the exercise or purported exercise of belligerent rights.

2. The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Italian Government agrees to make equitable compensation in lire to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Italian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Italian territory.

3. Italy likewise waives all claims of the nature covered by paragraph 1 of this Article on behalf of the Italian Government or Italian nationals against any of the United Nations which broke off diplomatic relations with Italy and which took action in co-operation with the Allied and Associated Powers.

4. The Italian Government shall assume full responsibility for all Allied military currency issued in Italy by the Allied military authorities, including all such currency in circulation at the coming into force of the present Treaty.

5. The waiver of claims by Italy under paragraph 1 of this Article includes any claims arising out of actions taken by any of the Allied and Associated Powers with respect to Italian ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising out of the Conventions on prisoners of war now in force.

6. The provisions of this Article shall not be deemed to affect the ownership of submarine cables which, at the outbreak of the war, were owned by the Italian Government or Italian nationals. This paragraph shall not preclude the application of Article 79 and Annex XIV to submarine cables.

* * * * *

Part VII

Property, Rights and Interests

Section II—Italian Property in the Territory of Allied and Associated Powers

Article 79

1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which on the coming into force of the present Treaty are within its territory and belong to Italy or to Italian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Italy or Italian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Italian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned.

2. The liquidation and disposition of Italian property shall be carried out in accordance with the law of the Allied or Associated Power concerned. The Italian owner shall have no rights with respect to such property except those which may be given him by that law.

3. The Italian Government undertakes to compensate Italian nationals whose property is taken under this Article and not returned to them.

4. No obligation is created by this Article on any Allied or Associated Power to return industrial property to the Italian Government or Italian nationals, or to include such property in determining the amounts which may be retained under paragraph 1 of this Article. The Government of each of the Allied and Associated Powers shall have the right to impose such limitations, conditions and restrictions on rights or interests with respect to industrial property in the territory of that Allied or Associated Power, acquired prior to the coming into force of the present Treaty by the Government or nationals of Italy, as may be deemed by the Government of the Allied or Associated Power to be necessary in the national interest.

5. (a) Italian submarine cables connecting points in Yugoslavia shall be deemed to be Italian property in Yugoslavia, despite the fact that lengths of these cables may lie outside the territorial waters of Yugoslavia.

(b) Italian submarine cables connecting a point in the territory of an Allied or Associated Power with a point in Italian territory shall be deemed to be Italian property within the meaning of this Article so far as concerns the terminal facilities and the lengths of cables lying within territorial waters of that Allied or Associated Power.

6. The property covered by paragraph 1 of this Article shall be deemed to include Italian property which has been subject to control by reason of a state of war existing between Italy and the Allied or Associated Power having jurisdiction over the property, but shall not include:

(a) Property of the Italian Government used for consular or diplomatic purposes;

(b) Property belonging to religious bodies or private charitable institutions and used exclusively for religious or charitable purposes;

(c) Property of natural persons who are Italian nationals permitted to reside within the territory of the country in which the property is located or to reside elsewhere in United Nations territory, other than Italian property which at any time during the war was subjected to measures not generally applicable to the property of Italian nationals resident in the same territory;

(d) Property rights arising since the resumption of trade and financial relations between the Allied and Associated Powers and Italy, or arising out of transactions between the Government of any Allied or Associated Power and Italy since September 8, 1943;

(e) Literary and artistic property rights;

(f) Property in ceded territories of Italian nationals, to which the provisions of Annex XIV shall apply;

(g) With the exception of the assets indicated in Article 74, part A, paragraph 2(b) and part D, paragraph 1, property of natural persons residing in ceded territories or in the Free Territory of Trieste who do not opt for Italian nationality under the present Treaty, and property of corporations or associations having *siège social* in ceded territories or in the

Free Territory of Trieste, provided that such corporations or associations are not owned or controlled by persons in Italy. In the cases provided under Article 74, part A, paragraph 2(b), and part D, paragraph 1, the question of compensation will be dealt with under Article 74, part E.

Memorandum of Understanding (Lombardo Agreement)
61 Stat. 39 62 (1947)

Between the Government of the United States of America and the Government of Italy regarding Italian assets in the United States of America and certain claims of United States nationals

Discussions have taken place with representatives of the Government of Italy on the question of disposition of Italian property in the United States of America. These discussions have grown out of the terms of the Treaty of Peace with Italy dated at Paris February 10, 1947, particularly Article 79 thereof; and out of the financial and other relations between the United States of America and Italy during the period since the Italian Armistice. As a further step toward the bettering of relations between Italy and the United States of America, the Government of the United States of America has felt it desirable, subject to appropriate governmental action, to renounce certain of the rights granted to it under the terms of the Treaty of Peace, and to return and unblock property in the United States of America which has been vested or blocked by the Government of the United States of America by reason of an interest of Italy or Italian nationals. The Government of Italy, on the other hand, has recognized that in justice it should provide funds to be utilized by the Government of the United States of America in application to claims of United States nationals arising out of the war with Italy.

The Government of the United States of America and the Government of Italy have, therefore, reached an understanding, as follows:

Article I

1. The Government of the United States of America, referring to Article 79 of the Treaty of Peace with Italy, dated at Paris February 10, 1947, nevertheless agrees, within the limits provided by law:

(a) to take the necessary steps to effect the return of property and interests vested in or transferred to any officer or agency of the Government of the United States of America under the Trading with the Enemy Act, as amended,¹ which were owned by the Government of Italy or Italian nationals immediately prior to such vesting or transfer, or the net proceeds of such property or interest; provided, however, that such return shall be subject to the conditions and exceptions set forth in Annex I, which constitutes an integral part of this Memorandum of Understanding;

(b) to take the necessary steps to effect the release by the United States authorities of blocked property and interests in the United States of America of Italy or Italian nationals. Such release shall be effected in accordance with conditions stated in a letter of assurances, dated today, and addressed by the Italian authorities to the Secretary of the Treasury of the United States of America, it being understood that the unblocking procedure will actually be put into effect not later than one month from the date of this Memorandum of Understanding;

(c) to take the necessary steps to return, in their condition at the time of return, to the Government of Italy all vessels which were under Italian registry and flag on September 1, 1939, which were thereafter acquired by the Government of the United States of America either by purchase or by forfeiture and which are now owned by the Government of the United States of America; provided, that in the event forfeiture proceedings against any of the vessels are dismissed, the Government of Italy agrees to discharge and save harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any claims against such vessels; and

(d) to take the necessary steps, subject to all terms and conditions of authorizing legislation, to transfer to the Government of Italy surplus liberty ships of the Government of the United States of America, to be operated by Italy for commercial uses, of a total tonnage approximately equal to the total tonnage of vessels which were under Italian registry and

¹ 50 U.S.C. App. 1 38.

flag on September 1, 1939, and were subsequently seized in United States ports and thereafter lost while being employed in the United States war effort, provided that the selection of such surplus ships shall be by the Government of the United States of America, after consultation with the Government of Italy, and provided further that the ships shall be transferred on an as is where is basis.

2. The release or return of property and interests under the present Article shall not prevent the assertion of rights or claims to, against or with respect to such property and interests or the proceeds thereof; nor (in accordance with Article 76 of the Treaty of Peace signed at Paris) shall this Memorandum of Understanding or its execution in any way give rise to any cause of action or claim against the Government of the United States of America, or any officer or agency thereof.

3. (a) The provisions of this Article shall in no manner impose any obligation upon the Government of the United States of America to return any royalty or other compensation or right to receive a royalty or other compensation to the Government of Italy or any Italian national arising out of the use prior to December 31, 1945 of any invention, patent or patent right in the United States held by the Government of Italy or Italian nationals, or subject to return to the Government of Italy or Italian nationals pursuant to this Memorandum of Understanding.

(b) The Government of Italy recognizes that the Government of the United States of America, its agencies or United States nationals, have no responsibility for the processing, settlement or satisfaction of any claims of Italian nationals falling under the terms of this paragraph and agrees, consistent with Paragraph 3 of Article 79 of the Treaty of Peace, to compensate Italian nationals for any duly established claims falling under the terms of this Article.

(c) Except as set forth in this Memorandum of Understanding or in Annex I hereto, industrial property released or returned by the Government of the United States of America pursuant to paragraph 1 of the present Article shall be subject only to such restrictions as may otherwise be generally applicable to industrial property in the United States of America held by foreign countries or nationals of such countries.

Article II

4. The Government of Italy agrees to pay and deposit with the Government of the United States of America on or before December 31, 1947 the sum of \$5,000,000 (five million dollars) in currency of the United States of America, this sum to be utilized, in such manner as the Government of the United States of America may deem appropriate, in application to the claims of United States nationals arising out of the war with Italy and not otherwise provided for.

Article III

Definitions

5. For the purposes of this Memorandum of Understanding, the term "Italian nationals" means individuals who are nationals of Italy or corporations or associations organized under the laws of Italy, at the time of the coming into force of this Memorandum of Understanding.

Article IV

Clauses of the Treaty of Peace

6. It is agreed that any of the clauses of the Treaty of Peace, dated at Paris February 10, 1947, to which this Memorandum of Understanding and the Annex hereto may refer, shall be considered as constituting an integral part of this Memorandum of Understanding and the Annex hereto, as between the Governments of the United States of America and Italy.

Article V

Effective Date

7. This Memorandum of Understanding shall enter into force upon the day it is assigned.

Done at Washington in duplicate, in the English and Italian languages, both of which shall have equal validity, this 14th day of August, 1947.

For the Government of the United States of America:
ROBERT A. LOVETT

For the Government of Italy:
LOMBARDO

Annex I

The Government of the United States of America intends to effect returns, pursuant to Article I, paragraph 1(a) of this Memorandum of Understanding, by appropriate legislation permitting returns of vested property to the Government of Italy and subjects or citizens of Italy and corporations or associations organized under the laws of Italy upon the terms and conditions generally applicable to return of such property to others eligible for return pursuant to Section 32 of the Trading with the Enemy Act, as amended.

It is understood that while the Government of the United States of America will seek to eliminate Italian nationality as a disqualification from eligibility for return pursuant to Section 32(a) of the Trading with the Enemy Act, as amended,

(a) The Government of the United States of America does not intend to assume any obligation to make returns to any of the following:

(1) The Italian Fascist Party, any organization closely affiliated therewith (other than the Government of Italy) or any person who was a member of such party or organization at any time after September 8, 1943; or

(2) Any person, firm or organization convicted of violation of any of the statutes set forth in Section 34(a) of the Trading with the Enemy Act, as amended; or

(3) Any person, firm or organization convicted of war crimes or of having collaborated with an enemy country after September 8, 1943; or

(4) Any person, firm or organization indicted or officially charged with war crimes or with having collaborated with an enemy country after September 8, 1943, until such person, firm or organization has been officially acquitted or cleared of such indictment or charge; or

(5) A corporation or association organized under the laws of any country other than Italy or Trieste; or

(6) Any individual who was at any time after December 7, 1941, a citizen or subject of a nation other than Italy with which the United States of America has at any time since December 7, 1941, been at war; or

(7) Any individual voluntarily resident at any time since December 7, 1941, within the territory of any nation other than Italy with which the United States of America has at any time since December 7, 1941, been at war;

(b) Ultimate disposition of property falling under the terms of section (a), paragraphs (1)-(7) above is reserved for future decision by the Government of the United States of America, after consultation between the Governments of Italy and the United States of America;

(c) The Government of the United States of America does not intend to make returns in any case in which it deems that return would be contrary to its interests in respect of national security or antitrust or fiscal policy; and

(d) The Government of the United States of America does not intend to assume any obligation to make returns of any property which was used pursuant to an arrangement to cloak or to conceal any property or interest within the United States of America of any person ineligible to receive a return under Section 32(a)(2) of the Trading with the Enemy Act, as amended.

It is further understood that in the case of any literary, artistic or industrial property to be returned, the property shall remain subject to all licenses and agreements for licenses which were granted or entered into by the United States of America with respect to it and which were in effect immediately prior to return; and any rights of the Government of the United States of America to revoke any such license or agreement for license shall not be included within the return.

Litvinov Assignment

Department of State Publication 528; European and British Commonwealth Series 2 (new series); Eastern European Series No. 1 (old series)

Washington, November 16, 1933

My Dear Mr. President:

Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claim with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am, my dear Mr. President,
Very sincerely yours,

Maxim Litvinov
*People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics.*

MR. FRANKLIN D. ROOSEVELT
*President of the United States of America
The White House*

THE WHITE HOUSE
Washington, November 16, 1933.

My Dear Mr. Litvinov:

I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claims against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the

Government of the United States, the Government of the Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,
Very sincerely yours,

Franklin D. Roosevelt

Agreement Between the Government of the United States of America and the Government of the Polish People's Republic Regarding Claims of Nationals of the United States

Signed and entered into force July 16, 1960.

[T.I.A.S. 4545]

The Government of the United States of America and the Government of the Polish People's Republic desiring to effect a settlement of claims of nationals of the United States against Poland and desiring to advance economic relations between the two countries,

Have agreed as follows:

Article 1

A. The Government of the Polish People's Republic, hereinafter referred to as the Government of Poland, agrees to pay, and the Government of the United States agrees to accept, the sum of \$40,000,000.00 United States currency in full settlement and discharge of all claims of nationals of the United States, whether natural or juridical persons, against the Government of Poland on account of the nationalization and other taking by Poland of property and of rights and interests in and with respect to property, which occurred on or before the entry into force of this Agreement.

B. Payment of the sum of \$40,000,000.00 by the Government of Poland shall be made to the Secretary of State of the United States in twenty annual installments of \$2,000,000.00 United States currency, each installment to be paid on the tenth day of January, commencing on the tenth day of January 1961.

Article 2

Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States for

(a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property;

(b) the appropriation or the loss of use or enjoyment of property under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property, it being understood that, for the purpose of this clause, the date of appropriation or the loss of use or enjoyment is the date on which such Polish laws, decrees or other measures were first applied to the property; and

(c) debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland.

Article 3

The amount paid to the Government of the United States under Article 1 of this Agreement shall be distributed in such manner and in accordance with such methods of distribution as may be adopted by the Government of the United States.

Article 4

After the entry into force of this Agreement the Government of the United States will neither present to the Government of Poland nor espouse claims of nationals of the United States against the Government of Poland to which reference is made in Article 1 of this Agreement. In the event that such claims are presented directly by nationals of the United States to the Government of Poland, the Government of Poland will refer them to the Government of the United States.

Article 5

A. With a view to assisting the Government of the United States in its distribution among claimants of the sum to be paid by the Government of Poland, the Government of Poland will, upon the request of the Government of the United States, furnish such information or evidence, including details as to ownership and value of property and rights and interests in and with respect to property, as may be necessary or appropriate for that purpose and, in the event that such information or evidence is deemed insufficient, permit examination by representatives of the Government of the United States, to the extent allowed by Polish laws, of property which it is claimed has been nationalized or taken by Poland.

B. With a view to protecting the Government of Poland from the possible assertion through third countries, or otherwise, of claims settled by this Agreement, the Government of the United States will furnish to the Government of Poland copies of such formal statements of claims as may be made by claimants and copies of decisions with respect to the validity and amounts of claims.

C. With respect to each claim found to be valid by the Government of the United States, the Government of the United States will furnish to the Government of Poland original documents of title pertaining to the property nationalized or taken by Poland by which the claim was established, including securities of juridical persons owned by the claimant if all of the property of such juridical persons has been nationalized or taken by Poland. In the event that a claim is not based on such documents, the Government of the United States will furnish to the Government of Poland a release signed by the claimant.

D. Each Government will furnish to the other the information or render the assistance referred to in paragraphs A, B, and C of this Article in accordance with procedures to be agreed upon by the two Governments.

Article 6

Within thirty days after the entry into force of this Agreement, the Government of the United States will release its blocking controls over all Polish property in the United States.

Article 7

The Annex to this Agreement is an integral part of this Agreement.

Article 8

The present Agreement shall enter into force on the date of signature.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

Done at Washington, in duplicate, in the English and Polish languages, both equally authentic, this 16th day of July, 1960.

For the Government of the United States of America:

/s/ FOY D. KOHLER

For the Government of the Polish People's Republic:

/s/ STANISLAW RACZKOWSKI

Annex

A. For the purpose of distribution by the Government of the United States of the sum to be paid by the Government of Poland, "claims of nationals of the United States" are rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropriation or other taking to the date of entry into force of this Agreement, have been continuously owned, subject to the provisions of paragraphs B and C of this Annex,

(a) directly by natural persons who were nationals of the United States;

(b) directly by juridical persons organized under the laws of the United States or of a constituent State or other political entity thereof, of which fifty per cent or more of the outstanding capital stock or proprietary interest was owned by nationals of the United States;

(c) directly by juridical persons organized under the laws of the United States or of a constituent State or other political entity thereof, of which fifty per cent or more of the outstanding capital stock or proprietary interest was owned by natural persons who were nationals of the United States, directly, or indirectly through interests in one or more juridical persons of any nationality;

(d) indirectly by natural persons who were nationals of the United States or by juridical persons organized under the laws of the United States or of a constituent State or other political entity thereof, through interests in juridical persons organized under the laws of the United States or of a constituent State or other political entity thereof which are not included within category (b) or (c) above;

(e) indirectly by persons within category (a), (b) or (c) above through ownership of capital stock or direct proprietary interests in juridical persons organized under the laws of Poland, any part of whose property has been taken by Poland, or in juridical persons organized under the laws of Germany, a major part of whose property has been taken by Poland;

(f) indirectly by persons within category (d) above through ownership by juridical persons to which reference is made in the last clause thereof, of capital stock or direct proprietary interests in juridical persons organized under the laws of Poland, any part of whose property has been taken by Poland or in juridical persons organized under the laws of Germany, a major part of whose property has been taken by Poland and which have ceased their activities; or

(g) indirectly by persons within category (a), (b), (c) or (d) above through interests which collectively are substantial in amount, through any number of juridical persons organized under the laws of any country, a substantial part of whose property has been taken by Poland, excepting, however, interests which are compensable through any other international agreement to which Poland is a party.

B. Juridical persons organized under the laws of the United States or of a constituent State or other political entity thereof which have been reorganized through judicial proceedings after their property or rights and interests in and with respect to property were nationalized or taken by Poland shall participate in the sum to be paid by the Government of Poland only to the extent that the outstanding capital stock or proprietary interest in such juridical persons was owned, at the time of such nationalization or other taking, by natural persons who were nationals of the United States, directly, or indirectly through interests in one or more juridical persons organized under the laws of the United States or of a constituent State or other political entity thereof.

C. Claims based in whole or in part on property acquired after the application of discriminatory German measures depriving or restricting rights of owners of such property shall participate in the sum to be paid by the Government of Poland only for the parts of such claims which are not based upon property acquired under such circumstances.

JULY 16, 1960

EXCELLENCY:

I have the honor to acknowledge the receipt of your letter of this date which reads as follows:

"I have the honor to refer to the discussions held during the negotiations concerning the Agreement signed today between the Governments of the Polish People's Republic and the United States of America regarding claims of nationals of the United States.

"In connection with the interest expressed by the Government of the United States of America in the settlement of outstanding dollar bonds, issued or guaranteed by the Polish Government in the United States during the period 1919 to 1939, I have the honor to inform you that the Polish Government confirms its intention to settle the problem of this bonded indebtedness by direct talks with American bondholders or their representatives.

"Accept, Excellency, the assurances of my highest consideration."

I have the honor to inform you that my Government has taken note of the statement quoted above.

Accept, Excellency, the assurances of my highest consideration.

For the Secretary of State:
/s/ Foy D. KOHLER
*Assistant Secretary of State
for European Affairs*

His Excellency
STANISLAW RACZKOWSKI
*Minister Plenipotentiary,
Financial Counselor,
Embassy of the Polish People's Republic.*

Protocol

With reference to carrying out the provisions of Article 5 of the Agreement between the Governments of the United States and the People's Republic of Poland regarding claims of United States nationals entered into at Washington on July 16, 1960, representatives of the Government of the United States and the Ministry of Finance of Poland met in Warsaw, Poland and mutually agreed upon the following points:

1. The Government of the United States in order to fulfill the provisions of Article 5 of the Claims Agreement will designate a special representative and alternate who will be attached to the Embassy of the United States as diplomatic officials responsible to the United States Ambassador.

2. a. The United States representative will serve as a liaison officer between the Foreign Claims Settlement Commission of the United States and the Ministry of Finance of the Polish People's Republic hereinafter called the Polish representative who will furnish information provided for in Article 5 of the Claims Agreement.

b. The United States representative, carrying out his functions with the assistance of an adequate staff, also being members of the Embassy staff designated for this purpose, shall address written requests to the Ministry of Finance of Poland and/or its designated agents, and otherwise maintain liaison for information necessary to verify or refute claims under the above mentioned agreement.

3. a. The functions of the United States representative shall last as long as necessary to carry out the provisions of Article 5, but in the event the Congress of the United States places a time limitation upon the Foreign Claims Settlement Commission, within which the claims program must be completed, the Ministry of Finance agrees to the extent possible to cooperate with the Foreign Claims Settlement Commission for the purpose of assisting the Commission to meet its responsibilities.

b. The Ministry of Finance of Poland has offered and agreed to furnish the required information based upon existing documents and other available data within a time no longer than six (6) months after the receipt of requests for such information. Each request shall specify the information required by the Foreign Claims Settlement Commission to establish the title, status and value of the property upon which the claim is based.

4. a. To assist the Foreign Claims Settlement Commission in the evaluation of small urban and rural properties, the Polish representative will inform the United States representative of the pre-war prices of arable and forest land of various classes for the different regions of the country, the price of urban lots and of typical urban and rural dwellings, and estimates of the pre-war value of typical small industrial and commercial enterprises, handicrafts, etc., based upon insurance evaluations and other available data.

If owing to special circumstances, the evaluation in the manner indicated of a specific property of the type mentioned above is insufficient for the purposes of the Foreign Claims Settlement Commission, the Polish representative will furnish all available data pertaining to the pre-war value of such specific property.

b. Upon request by the United States representative the Polish representative will furnish an evaluation of nationalized properties as established by Polish authorities at the date of taking over the property.

c. The Polish representative will furnish when available, through its agents information as to the extent and degree of damage suffered by the property concerned, as a consequence of war and enemy occupation.

5. It is agreed that inspections and investigations on-the-spot shall take

place if the information furnished according to paragraphs 3 and 4 above is deemed insufficient by the Foreign Claims Settlement Commission to establish facts necessary to a determination of the claim concerned. The procedure in such cases will be as follows:

a. The United States representative will submit a written request for an investigation on-the-spot to the Polish representative indicating the facts which such investigation seeks to establish.

b. Within a time no longer than one month after the receipt of such requests, the Polish representative will arrange with the United States representative the scope and time of such investigation or will provide such additional records, information and data concerning the case as may, in the judgment of the Foreign Claims Settlement Commission, make such investigation unnecessary.

c. A Polish representative will accompany the United States representatives when inspections and investigations are carried out.

d. The Polish representative will inform the United States representative if the specific investigation requested can not be carried out because of the prohibitions of Polish law.

6. The United States representative will deliver to the Polish representative a copy of each claim filed within the time limits fixed by the Foreign Claims Settlement Commission under the law of the United States as well as a copy of each final decision of the Foreign Claims Settlement Commission on timely filed claims under the Polish Claims Agreement.

7. The United States representative will also deliver the following documents to the Polish representative:

a. the securities of juridical persons owned by claimants receiving awards based upon the nationalization or other taking by Poland of the total property of such juridical persons.

b. notarized releases signed by claimants transferring to the Polish state their rights based upon interests in limited liability corporations or the like, which are not represented by shares, and rights based upon the appropriation or loss of use or enjoyment of property in Poland when claimants receive awards based upon such rights.

c. notarized releases signed by claimants receiving awards based upon debts owed by enterprises which have been nationalized or taken by Poland, and based upon debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland.

8. The Foreign Claims Settlement Commission agrees to pay the cost incurred by the Ministry of Finance for certified or photostatic copies of official documents or records or for special services of Polish engineers, architects, and other technicians when such services are requested by the United States representative.

Signed at Warsaw, November 29, 1960, in duplicate, in the English and Polish languages, both equally authentic.

Agreement Between the Government of the United States of America and the Government of the Socialist Federal Republic of Yugoslavia Regarding Claims of United States Nationals

*Signed November 5, 1964; Entered into force January 26, 1965.
With minute and exchange of notes.*

[T.I.A.S. 5750]

The Government of the United States of America and the Government of the Socialist Federal Republic of Yugoslavia, desiring to effect a settlement of claims of United States nationals against the Government of the Socialist Federal Republic of Yugoslavia, have agreed as follows:

Article I

(a) The Government of Yugoslavia agrees to pay, and the Government of the United States agrees to accept, the sum of \$3,500,000 United States currency in full settlement and discharge of all pecuniary claims of nationals of the United States, whether natural or juridical persons, against the Government of Yugoslavia, on account of the nationalization and other taking of property and of rights and interests in and with respect to property which occurred between July 19, 1948 and the date of this Agreement.

(b) Such payment by the Government of Yugoslavia shall be made to the Secretary of State of the United States in equal payments of \$700,000 each. The first payment shall be made on January 1, 1966, and the remaining payments shall be made on January 1, 1967, January 1, 1968, January 1, 1969 and January 1, 1970, respectively.

Article II

The claims of nationals of the United States to which reference is made in Article I of this Agreement refer to claims which were owned by nationals of the United States on the date on which the property and rights and interests in and with respect to property on which they are based was nationalized or taken by the Government of Yugoslavia and on the date of this Agreement.

Article III

The distribution of the lump sum referred to in Article I of this Agreement is within the exclusive competence of the Government of the United States in accordance with its legislation and without any responsibility arising therefrom for the Government of Yugoslavia.

Article IV

With a view to assisting the Government of the United States in its distribution among claimants of the lump sum referred to in Article I of this Agreement, the Government of Yugoslavia will, upon the request of the Government of the United States, with respect to property claimed furnish certified copies of pertinent public records of ownership, mortgages and exemptions from nationalization or taking, certified copies of pertinent decrees or orders of competent Yugoslav authorities with respect to the nationalization and other taking and, to the extent available, original or certified copies of pertinent Yugoslav official evaluations.

The Government of the United States will furnish to the Government of Yugoslavia certified copies of such formal submissions as may be made by claimants to the Government of the United States for participation in the lump sum to be paid by the Government of Yugoslavia pursuant to this Agreement and of the corresponding decisions with respect thereto. Upon receipt of such decisions the Government of Yugoslavia will inform the Government of the United States if the property or right or interest in and with respect to property claimed was not in fact owned by the claimant or

was not in fact nationalized or otherwise taken by the Government of Yugoslavia.

The documents and information referred to herein will be furnished by the respective Governments as expeditiously as possible.

Article V

The present Agreement shall enter into force on the date of the exchange of notes confirming that it has been approved by the competent authorities of both Governments.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at Belgrade on the 5th day of November, 1964, in duplicate, in the English and Serbo-Croatian languages, both texts being equally authentic.

For the Government of the United States of America:

C. BURKE ELBRICK

Ambassador of the United States of America.

For the Government of the Socialist Federal Republic of Yugoslavia:

K. GLIGOROV

Member of the Federal Executive Council, Federal Secretary for Finance.

Interpretative Minute

For the purpose of the Agreement between the Government of the United States of America and the Government of the Socialist Federal Republic of Yugoslavia regarding Claims of United States Nationals signed at Belgrade, November 5, 1964, it is understood that:

1. Rights and interests in and with respect to properties which have not been established through probate or other appropriate legal proceedings in Yugoslavia are covered and settled by this Agreement for the amount of the equity or value remaining after deduction of Yugoslav taxes which would have been payable if such probate or other legal proceedings had been concluded.

2. Properties or parts thereof which have been exempted from nationalization or other taking by the Government of Yugoslavia in accordance with the laws of Yugoslavia are not covered or settled by this Agreement.

3. Rights and interests in and with respect to properties which are mortgaged or otherwise encumbered by an owner or the owners thereof are covered and settled by this Agreement for the amount of the equity or value remaining after deduction of the principal amount of such mortgage or other encumbrance.

Belgrade, November 5, 1964.

C. Burke Elbrick
K. Gligorov

Yugoslav Note

BELGRADE, November 5, 1964.

EXCELLENCY,

With reference to the Agreement between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the United States of America regarding claims of United States Nationals signed in Belgrade, November 5, 1964, I have the honour to inform you that under the respective Yugoslav Laws foreign nationals are entitled to equal treatment with Yugoslav nationals in respect of compensation for nationalization or other takings of property; consequently, claims of nationals of the United States which were not owned by nationals of the United States on the date on which the property or the rights and interests in and with respect to property on which they are based was nationalized or taken by the Government of Yugoslavia, will be treated by the Government of Yugoslavia under compensation procedures prescribed by Yugoslav Laws no less favorable than those of Yugoslav nationals for similar property or rights and interests in and with respect to property.

Accept, Excellency, the assurances of my highest consideration.

K. GLIGOROV

His Excellency
C. BURKE ELBRICK

Ambassador of the United States of America, Belgrade

U.S. Note

EXCELLENCY,

BELGRADE, November 5, 1964.

I have the honor to acknowledge receipt of your letter of this date which reads as follows:

"With reference to the Agreement between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the United States of America regarding claims of United States Nationals signed in Belgrade, November 5, 1964, I have the honour to inform you that under the respective Yugoslav Laws foreign nationals are entitled to equal treatment with Yugoslav nationals in respect of compensation for nationalization or other takings of property; consequently, claims of nationals of the United States which were not owned by nationals of the United States on the date on which the property or the rights and interests in and with respect to property on which they are based was nationalized or taken by the Government of Yugoslavia, will be treated by the Government of Yugoslavia under compensation procedures prescribed by Yugoslav Laws no less favorable than those of Yugoslav nationals for similar property or rights and interests in and with respect to property."

I have the honor to inform you, that my Government has taken note of the statement quoted above.

Accept, Excellency, the assurances of my highest consideration.

C. Burke Elbrick

His Excellency
Kiro Gligorov

*Member of the Federal Executive Council, Federal Secretary for
Finance Belgrade*

Regulations Governing the Receipt and Settlement of Claims Under the International Claims Settlement Act of 1949, as Amended ¹

Code of Federal Regulations

Title 45—Public Welfare

Chapter V—Foreign Claims Settlement Commission of the United States

Subchapter A—Rules of Practice

Part 500—Appearance and Practice Before the Commission

Sec.

500.1 Appearance and practice.

500.2 Notice of entry or withdrawal of counsel in claims.

500.3 Fees.

500.4 Petition for fee exceeding ten per centum of amount paid on account of claim.

500.5 Order allowing fee in excess of ten per centum of amount paid on account of claim.

500.6 Suspension of attorneys.

500.7 Restrictions on former employees.

Authority: §§ 500.1 to 500.7 issued under sec. 2, 62 Stat. 1240, as amended, sec. 3, 64 Stat. 13, as amended; 50 U.S.C. App. 2001, 22 U.S.C. 1622.

§ 500.1 Appearance and practice.

(a) An individual may appear in his own behalf; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; any officer or employee of the United States Department of Justice, when designated by the Attorney General of the United States, may represent the United States in a claim proceeding.

(b) A person may be represented by an attorney at law admitted to practice in any State or Territory of the United States, or the District of Columbia. With respect to Philippine war damage claims under the provisions of Public Law 87-616 (76 Stat. 411), a person may also be represented by an attorney at law in good standing with the Philippine Bar Association or the Philippine Supreme Court. However, such attorney may be required to furnish a certificate to this effect.

(c) In cases falling within the purview of Subchapter B of this chapter, persons designated by veterans' service, and other organizations to appear before the Commission in a representative capacity on behalf of claimants shall be deemed duly authorized to practice before the Commission when the designating organization shall have been issued a letter of accreditation by the Commission. Petitions for accreditation shall be in writing, executed by duly authorized officer or officers, addressed to the Foreign Claims Settlement Commission of the United States, Washington, D.C. Upon receipt of a petition setting forth pertinent facts as to the organization's history, purpose, number of posts or chapters and their locations, approximate number of paid-up membership, statements that the organization will not charge any fee for services rendered by its designees in behalf of claimants and that it will not refuse on the grounds of non-membership to represent any claimant who applies for such representation if he has an apparently valid claim, accompanied by a copy of the organization's constitution, or charter, by-laws, and its latest financial statement, the Commission in its discretion will consider and in appropriate cases issue or deny letters of accreditation.

¹ Including amendments pertaining thereto through Jan. 14, 1967.

(d) A person may not be represented before the Commission except as authorized in paragraph (a), (b) or (c) of this section.

§ 500.2 Notice of entry or withdrawal of counsel in claims.

(a) Counsel entering an appearance in a claim originally filed by claimant in his own behalf or requesting a substitution of attorneys, and counsel filing a claim on behalf of a claimant under Public Law 87-616, shall be required to file an authorization by claimant.

(b) When counsel seeks to withdraw from the prosecution of a claim, it must appear that he has duly notified his client (claimant).

(c) When a claimant advises the Commission that counsel no longer represents him, a copy of the Commission's acknowledgment shall be forwarded to such counsel.

§ 500.3 Fees.

(a) No remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within the purview of Subchapter B and Subchapter F of this chapter shall exceed ten per centum of the amount allowed on account of such claim, except that the Commission in its discretion may fix a lesser per centum with respect to any claim filed thereunder.

(b) The total remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within the purview of Title III of the Act¹ shall not exceed ten per centum of the total amount paid on account of such claim, except that the Commission may upon petition, as prescribed in § 500.4, in its discretion enter an order authorizing such remuneration in an amount which exceeds the maximum otherwise permitted.

(c) The total remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within Title I and Title IV of the Act¹ shall not exceed ten per centum of the total amount paid on account of such claim.

(d) No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commission under Title V of the International Claims Settlement Act of 1949, as amended (claims against the Government of Cuba), shall exceed 10 per centum of so much of the total amount of such claim, as determined by the Commission under Title V of the Act, as does not exceed \$20,000, plus 5 per centum of so much of such amount, if any, as exceeds \$20,000.

(e) The total remuneration on account of services rendered or to be rendered to or on behalf of any applicant in connection with any application filed under Public Law 87-616 (76 Stat. 411) shall not exceed five per centum of the amount paid by the Commission on account of such application.

§ 500.4 Petitions for additional remuneration pursuant to section 317(b) of Title III of the Act.¹

A petition under section 317(b) of the Act for an order authorizing the payment of remuneration in excess of the maximum prescribed by section 317(a) of the Act shall be in writing and verified by the petitioner. It shall include (a) a fully itemized statement of all services at any time rendered by the petitioner on behalf of the claimant in connection with the claim with respect to which the petition is filed, whether rendered before or after the filing of the claim with the Commission, (b) a statement of all remuneration theretofore received by the petitioner on account of such services, and (c) an itemized statement to the best of petitioner's knowledge, information and belief, of all services theretofore at any time rendered by any other person or persons on behalf of the claimant in connection with such claim and of all remuneration paid on account of such other services; shall state in detail such special circumstances of unusual hardship as, in the opinion of the petitioner, justify payment in excess of the maximum remuneration otherwise permitted by section 317(a); shall be accompanied, as exhibits, by all documents including agreements relating to remuneration, available to petitioner evidencing the allegations of his petition; and shall state the total amount of remuneration which it is believed should be authorized.

¹ Refers to the International Claims Settlement Act of 1949, as amended.

§ 500.5 Order allowing fees in excess of ten per centum of amount paid on account of claims under Title III of the International Claims Settlement Act of 1949, as amended.

The Commission may upon the petition described in § 500.4 and supporting affidavit, after consultation with the claimant and consideration of the evidence, in its sole discretion, upon a finding that there exist special circumstances of unusual hardship which require the payment of a fee in excess of the maximum amount otherwise allowable, issue an order authorizing such excess, the said order to specify the amount of such excess.

§ 500.6 Suspension of attorneys.

(a) The Commission may disqualify, or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found after a hearing in the matter—

(1) Not to possess the requisite qualifications to represent others before the Commission; or

(2) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(3) To have violated sections 10 and 214 of the War Claims Act of 1948, as amended, or sections 4(f), 317(a), 414, and 512 of the International Claims Settlement Act of 1949, as amended, or § 500.3 of Part 500 of the regulations.

(b) Contemptuous or contumacious conduct at any hearing shall be ground for exclusion from said hearing and for summary suspension without a hearing for the duration of the hearing.

§ 500.7 Restrictions on former employees.

(a) No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall act in any way as agent or attorney for anyone other than the United States in connection with any matter before the Commission if he participated in the matter personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed.

(b) No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall, for a period of one year following such service, appear personally before the Commission as agent or attorney for anyone other than the United States with respect to a matter which was within the boundaries of his official responsibility during the last year of his service as an officer or employee of the Government.

Part 501—Subpoenas, Depositions, and Oaths

Sec.

501.1 Extent of authority.

501.2 Subpoenas.

501.3 Service of process.

501.4 Witnesses.

501.5 Depositions.

501.6 Documentary evidence.

501.7 Time.

Authority: §§ 501.1 to 501.7 issued under sec. 2, 62 Stat. 1240, as amended, sec. 3, 64 Stat. 13, as amended; 50 U.S.C. App. 2001, 22 U.S.C. 1622.

§ 501.1 Extent of authority.

(a) Subpoenas, oaths and affirmations. The Commission or any member thereof may issue subpoenas, administer oaths and affirmations, take affidavits, conduct investigations and examine witnesses in connection with any hearing, examination, or investigation within its jurisdiction.

(b) Certification. The Commission or any member thereof may, for the purpose of any such hearing, examination, or investigation, certify the correctness of any papers, documents, and other matters pertaining to the administration of any laws relating to the functions of the Commission.

§ 501.2 Subpoenas.

(a) Issuance. A member of the Commission or a designated employee may,

on his own volition or upon written application by any party and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring persons to appear and testify or to appear and produce documents. Applications for the issuance of subpoenas duces tecum shall specify the books, records, correspondence, or other documents sought. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) Deposit for costs. The Commission or designated employee, before issuing any subpoena in response to any application by an interested party, may require a deposit in an amount adequate to cover the fees and mileage involved.

(c) Motion to quash. If any person subpoenaed does not intend to comply with the subpoena, he shall, within 15 days after the date of service of the subpoena upon him, petition in writing to quash the subpoena. The basis for the motion must be stated in detail. Any party desiring to file an answer to a motion to quash must file such answer not later than 15 days after the filing of the motion. The Commission shall rule on the motion to quash, duly recognizing any answer thereto filed. The motion, answer, and any ruling thereon shall become part of the official record.

(d) Appeal from interlocutory order. An appeal may be taken to the Commission by the interested parties from the denial of a motion to quash or from the refusal to issue a subpoena for the production of documentary evidence.

(e) Order of court upon failure to comply. Upon the failure or refusal of any person to comply with a subpoena, the Commission may invoke the aid of the United States District Court within the jurisdiction of which the hearing, examination or investigation is being conducted, or wherein such person resides or transacts business. Such court, pursuant to the provisions of Public Law 696, 81st Congress, approved August 16, 1950, 50 U.S.C. App. 2001(d), may issue an order requiring such person to appear at the designated place of hearing, examination or investigation, then and there to give or produce testimony or documentary evidence concerning the matter in question. Any failure to obey such an order may be punished by the court as a contempt thereof. All processes in any such case may be served in the judicial district wherein such person resides or transacts business or wherever such person may be found.

§ 501.3 Service of Process.

(a) By whom served. The Commission shall serve all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve.

(b) Kinds of service. Subpoenas, orders, rulings, and other processes of the Commission may be served by delivering in person, by first class or registered mail, or by telegraph or by publication.

(c) Personal service. Service by delivering in person may be accomplished by:

(1) Delivering a copy of the document to the person to be served, to a member of the partnership to be served, to an executive officer, or a director of the corporation to be served or to a person competent to accept service; or

(2) By leaving a copy thereof at the residence, principal office or place of business of such person, partnership, or corporation.

(3) Proof of service. The return receipt for said order, other process or supporting papers, or the verification by the person serving, setting forth the manner of said service, shall be proof of the service of the document.

(4) Service upon attorney or agent. When any party has appeared by an authorized attorney or agent, service upon such attorney or agent shall be deemed service upon the party.

(d) Service by first class mail. Service by first class mail shall be regarded as complete, upon deposit in the United States mail properly stamped and addressed.

(e) Service by registered mail. Service by registered mail shall be regarded as complete on the date the return post office registered receipt for said orders, notices and other papers, is received by the Commission.

(f) Service by telegraph. Service by telegraph shall be regarded as complete when deposited with a telegraph company properly addressed and with charges prepaid.

(g) Service by publication. Service by publication is complete when due

notice shall have been given in the publication for the time and in the manner provided by law or rule.

(h) Date of service. The date of service shall be the day upon which the document is deposited in the United States mail or delivered in person, as the case may be.

(i) Filing with Commission. Papers required to be filed with the agency shall be deemed filed upon actual receipt by the Commission accompanied by proof of service upon parties required to be served. Upon such actual receipt the filing shall be deemed complete as of the date of deposit in the mail or with the telegraph company as provided in paragraphs (e) and (f) of this section.

§ 501.4 Witnesses.

(a) Examination of witnesses. Witnesses shall appear in person and be examined orally under oath, except that for good cause shown, testimony may be taken by deposition.

(b) Witness fees and mileage. Witnesses summoned by the Commission on its own behalf or on behalf of a claimant or interested party shall be paid the same fees and mileage that are allowed and paid witnesses in the District Courts of the United States. Witness fees and mileage shall be paid by the Commission or by the party at whose request the witness appears.

(c) Transcript of testimony. Every person required to attend and testify or to submit documents or other evidence shall be entitled to retain or, on payment of prescribed costs, procure a copy or transcript of his testimony or the documents produced.

§ 501.5 Depositions.

(a) Application to take. (1) An application to take a deposition shall be in writing setting forth the reason why such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken. If such deposition is being offered in connection with a hearing or examination, the application for deposition shall be made to the Commission at least 15 days prior to the proposed date of such hearing or examination.

(2) Application to take a deposition may be made during a hearing or examination, or subsequent to a hearing or examination only where it is shown for good cause that such testimony is essential and that the facts as set forth in the application to take the deposition were not within the knowledge of the person signing the application prior to the time of the hearing or examination.

(3) The Commission or its representative shall, upon receipt of the application and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before whom the witness is to testify. Such officer may or may not be the one specified in the application. The order shall be served upon all parties at least 10 days prior to the date of the taking of the deposition.

(b) Who may take. Such deposition may be taken before the designated officer or, if none is designated, before any officer authorized to administer oaths by the laws of the United States. If the examination is held in a foreign country, it may be taken before a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States.

(c) Examination and certification of testimony. At the time and place specified in said order the officer taking such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and his testimony shall be reduced to writing by, or under the direction of, the presiding officer. All objections to questions or evidence shall be deemed waived unless made in accordance with paragraph (d) of this section. The officer shall not have power to rule upon any objections but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness and that said officer is not counsel or attorney to any of the interested parties. The officer shall immediately seal and deliver an original and two copies of said transcript, together with his certificate, by registered mail to the Foreign Claims

Settlement Commission, Washington, D.C. 20579, or to the field office designated.

(d) Admissibility in evidence. The deposition shall be admissible in evidence, subject to such objections to the questions and answers as were noted at the time of taking the deposition, or within ten (10) days after the return thereof, and would be valid were the witness personally present at the hearing.

(e) Errors and irregularities. All errors or irregularities occurring shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(f) Scope of use. The deposition of a witness, if relevant, may be used if the Commission finds: (1) That the witness has died since the deposition was taken; or (2) that the witness is beyond a distance greater than 100 miles radius of Washington, D.C., the designated field office or the designated place of the hearing; or (3) that the witness is unable to attend because of other good cause shown.

(g) Interrogatories and cross-interrogatories. Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examinations. When a deposition is taken upon interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, and his representative or attorney, a stenographic reporter and the presiding officer, shall be present at the examination of the witness, which fact shall be certified by such officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

(h) Fees. A witness whose deposition is taken pursuant to the regulations in this part and the officer taking the deposition, shall be entitled to the same fees and mileage allowed and paid for like service in the United States District Court for the district in which the deposition is taken. Such fees shall be paid by the Commission or by the party at whose request the deposition is being taken.

§ 501.6 Documentary evidence.

Documentary evidence may consist of books, records, correspondence or other documents pertinent to any hearing, examination, or investigation within the jurisdiction of the Commission. The application for the issuance of subpoenas duces tecum shall specify the books, records, correspondence or other documents sought. The production of documentary evidence shall not be required at any place other than the witness' place of business. The production of such documents shall not be required at any place if, prior to the return date specified in the subpoena, such person either has furnished the issuer of the subpoena with a properly certified copy of such documents or has entered into a stipulation as to the information contained in such documents.

§ 501.7 Time.

(a) Computation. In computing any period of time prescribed or allowed by the regulations by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

(b) Enlargement. When by the regulations in this chapter or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discretion (1) with or without motion or notice, previous order or (2) upon motion permit the act to be done after the expiration of the specified period.

Subchapter C—Receipt, Administration and Payment of Claims Under the International Claims Settlement Act of 1949, as amended

Part 531—Filing of Claims and Procedures Therefor

Sec.

531.1 Time for filing.

- 531.2 Form and content.
- 531.3 Exhibits and documents in support of claim.
- 531.4 Acknowledgment and numbering.
- 531.5 Procedure for determination of claims.
- 531.6 Hearings.
- 531.7 Presettlement conference.

Authority: §§ 531.1 to 531.7 issued under sec. 3, 64 Stat. 13, as amended; 22 U.S.C. 1622.

§ 531.1 Time for filing.

- (a) Claims under Title III of the Act shall be filed with Commission on or before September 30, 1956, except that claims pursuant to section 305 (Soviet claims) shall be filed on or before March 31, 1956.
- (b) Claims under Title IV (Czechoslovakian claims) of the Act shall be filed with the Commission on or before September 15, 1959.
- (c) Claims under Title I of the Act (Polish claims) shall be filed with the Commission on or before March 31, 1962.
- (d) Claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967.
- (e) Claims under Title I of the Act pursuant to the Yugoslav Claims Agreement of November 5, 1964 shall be filed with the Commission on or before July 15, 1967.
- (f) Claims under Title V of the Act against the Chinese Communist regime shall be filed with the Commission on or before July 6, 1969.

§ 531.2 Form, content and filing of claims.

- (a) Claims shall be filed on official forms provided by the Commission upon request in writing addressed to the Commission at its principal office at Washington, D.C., shall include all of the information called for in the appropriate form indicated below, and shall be completed and signed in accordance with the instructions accompanying the form.
- (b) FCSC Form 285—Statement of Claim Against the Government of (Bulgaria, Hungary, Rumania, Italy, Soviet Union).
- (c) FCSC Form 604—Claim against the Government of Czechoslovakia.
- (d) FCSC Form 709—Claim against the Government of the Polish People's Republic.
- (e) FCSC Form 666—Claims against the Government of Cuba.
- (f) FCSC Form 701—Claims against the Government of Yugoslavia under the Yugoslav Claims Agreement of November 5, 1964.
- (g) FCSC Form 780—Claims against the Chinese Communist regime.
- (h) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing a claims program or the effective date of a lump-sum claims settlement agreement, or an intention to file a claim against a foreign country, shall not be considered as a timely filing of a claim under the statute or agreement.
- (i) Any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period.

§ 531.3 Exhibits and documents in support of claim.

- (a) If available, all exhibits and documents shall be filed with and at the same time as the claim, and shall, wherever possible, be in the form of original documents, or copies of originals certified as such by their public or other official custodian.
- (b) Documents in foreign language. Each copy of a document, exhibit or paper filed, which is written or printed in a language other than English, shall be accompanied by an English translation thereof duly verified under oath by its translator to be a true and accurate translation thereof, together with the name and address of the translator.
- (c) Preparation of papers. All claims, briefs, and memoranda filed shall be typewritten or printed and, if typewritten, shall be on legal size paper.

§ 531.4 Acknowledgment and numbering.

The Commission will acknowledge the receipt of a claim in writing and will notify the claimant of the claim number assigned to it, which number shall be used on all further correspondence and papers filed with regard to the claim.

§ 531.5 Procedure for determination of claims.

- (a) The Commission may on its own motion order a hearing upon any claim, specifying the questions to which the hearing shall be limited.
- (b) Without previous hearing, the Commission may issue a proposed decision in determination of a claim.
- (c) Such proposed decision shall be delivered to the claimant or his attorney of record in person or by mail. Delivery by mail shall be deemed completed 5 days after the mailing of such proposed decision addressed to the last known address of the claimant or his attorney of record. One copy of the proposed decision shall be available for public inspection at the office of the Commission. Notice of proposed decision shall be posted on the bulletin board at the office of the Commission on the day of its issuance and for 20 days thereafter.
- (d) It shall be the policy of the Commission to post on said bulletin board other information of general interest to the claimants before the Commission.
- (e) Where such proposed decision denies the claim in whole or in part, claimant may within 15 days of service thereof file objections to such denial, assigning the errors relied upon, with accompanying brief in support thereof, and may request a hearing on the claim, specifying whether for the taking of evidence or only for the hearing of oral argument upon the errors assigned.
- (f) Public notice shall be promptly posted on said bulletin board of the filing of any objections to, or request for a hearing on any proposed decision.
- (g) Upon the expiration of 30 days after such service or receipt of notice, if no objection under this section has in the meantime been filed, such proposed decision shall, without further order or decision of the Commission, become the Commission's final determination and decision on the claim.
- (h) If any such objections have in the meantime been filed, but no hearing requested, the Commission may, after due consideration thereof, (1) issue its final decision affirming or modifying its proposed decision, (2) issue a further proposed decision, or (3) on its own motion order hearing thereon, indicating whether for the taking of evidence on specified questions or only for the hearing of oral argument.
- (i) After the conclusion of a hearing, upon the expiration of any time allowed by the Commission for further submissions, the Commission may proceed to final decision and determination of the claim.
- (j) (1) In case an individual claimant dies prior to the issuance of a final decision his legal representative shall be substituted as party claimant. However, upon failure to comply with the foregoing, the Commission may issue its decision in the name of the estate and, in case of an award, certify the award to the Secretary of the Treasury for payment, if the payment of such award is provided for by statute.
- (2) Notice of the Commission's action under this subparagraph shall be forwarded to the claimant's attorney of record, or if claimant is not represented by an attorney, such notice shall be addressed to the estate of the claimant at the last known place of residence.
- (3) The term "legal representative" as applied in this subparagraph means, in general, the administrator or executor, heir(s), next of kin, or descendant(s).
- (k) After the date of filing with the Commission no claim shall be amended to reflect the assignment thereof by the claimant to any other person or entity except as otherwise provided by statute.
- (l) At any time after a final decision has been issued on a claim, or a proposed decision has become the final decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with the program under which such claim is filed, a petition to reopen on the ground of newly discovered evidence may be filed. No such petition shall be entertained unless it appears therein that the newly discovered evidence came to the knowledge of the party filing the petition subsequent to the date of issuance of the final decision or the date on which the proposed decision became the final decision; that it was not for want of due diligence that such evidence did not come sooner to his knowledge; and that the evidence is material, and not merely cumulative, and that reconsideration of the matter on the basis of such evidence would produce a different decision. Such petition shall include a statement of the facts which the petitioner expects to prove, the name and address of each witness, the

identity of documents, and the reasons for failure to make earlier submission of the evidence.

§ 531.6 Hearings.

(a) Hearings, whether upon the Commission's own motion or upon request of claimant, shall be held upon not less than fifteen days' notice of the time and place thereof.

(b) Such hearings shall be open to the public unless otherwise requested by claimant and ordered by the Commission.

(c) Such hearings shall be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of any unjust or unfounded claim or portion thereof; and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence shall be ruled upon by the presiding officer.

(d) The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his claim.

(e) Hearings may be stenographically reported either at the request of the claimant or upon the discretion of the Commission. Claimants making such a request shall notify the Commission at least ten (10) days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to him.

§ 531.7 Presettlement conference.

The Commission on its own initiative or upon the application of a claimant for good cause shown, may direct that a presettlement conference be held with respect to any issue involved in a claim.

Subchapter F—Receipt, Administration, and Payment of Claims Under Title II of the War Claims Act of 1948, as amended by Public Law 87-846.

Part 580—Filing of Claims and Procedures Therefor

Sec.

- 580.1 Time for filing.
- 580.2 Form, content and filing of claims.
- 580.3 Exhibits and documents in support of claims.
- 580.4 Acknowledgment and numbering.
- 580.5 Small business concerns.
- 580.6 Claims by corporations in excess of \$10,000.
- 580.7 Procedure for determination of claims.
- 580.8 Hearings.

Authority: §§ 580.1 through 580.8 issued pursuant to 62 Stat. 1240, U.S.C. App. 2001, and 76 Stat. 1112, 50 U.S.C. App. 2017(n).

§ 580.1 Time for filing.

Claims under title II of the War Claims Act of 1948, as amended by Public Law 87-846 shall be filed with the Commission on or before January 15, 1965.

§ 580.2 Form, content and filing of claims.

(a) Claims shall be filed on official forms provided by the Commission upon request in writing addressed to the Commission at its principal office at Washington, D.C., and shall include, to the extent available at the time, all of the information called for in the claim form (FCSC Form 846), and shall be completed and signed in accordance with the instructions accompanying the form.

(b) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing this claims program of an intention to file a claim for World War II losses, shall not be considered as a timely filing of a claim under Public Law 87-846.

(c) Any initial written indication of an intention to file a claim received by the Commission within 30 days prior to the expiration of the filing period therefor shall be considered as a timely filing of a claim if formalized (submission of a properly executed claim form) within 30 days after the expiration of the filing period.

§ 580.3 Exhibits and documents in support of claim.

(a) If available, all exhibits and documents shall be filed with and at the same time as the claim and shall, wherever possible, be in the form of original documents, or copies of original documents certified as such by their public or other official custodian.

(b) Documents in foreign language. Each copy of a document, exhibit or paper filed, which is written in a language other than English, shall be accompanied by an English translation thereof duly verified under oath by its translator to be a true and accurate translation thereof, together with the name and address of the translator.

(c) Preparation of papers. All claims, briefs and memoranda filed shall be typewritten or printed and, if typewritten, shall be on legal size paper.

§ 580.4 Acknowledgment and numbering.

The Commission will acknowledge the receipt of a claim and will notify the claimant of the claim number assigned to it, which number shall be used on all further correspondence and papers filed with regard to the claim.

§ 580.5 Small business concerns.

Any corporation or commercial entity for the purpose of receiving priority payment from the Secretary of the Treasury under section 213(a) of the War Claims Act of 1948, as amended, must so indicate on the official claim form (FCSC Form 846). In due course, the Foreign Claims Settlement Commission will request the Director, Office of Small Business Size Standards, to determine the size status of such claimant pursuant to such rules and regulations as may be promulgated by that office, provided that the claimant qualifies under section 202(a) of the War Claims Act of 1948, as amended.

§ 580.6 Claims by corporation in excess of \$10,000.

A statement under oath is required from corporations filing claims in excess of \$10,000, disclosing the aggregate amount of Federal tax benefits derived by such corporation in any prior tax year or years resulting from any deduction or deductions claimed for the loss or losses with respect to which such claim is filed. Pursuant to the Act, such Federal tax benefits shall be the aggregate of the amounts by which the claimants' taxes for such year or years under chapters 1, 2A, 2B, 2D and 2E of the Internal Revenue Code of 1939 (53 Stat. 4), or subtitle A of the Internal Revenue Code of 1954 (68A Stat. 4, 26 USC 1 *et seq.*) were decreased by reason of such loss or losses.

§ 580.7 Procedure for determination of claims.

The procedure set forth under § 531.5, Subchapter C of this Chapter shall be applicable to claims filed pursuant to title II of the War Claims Act of 1948, as amended, by Public Law 87-846.

§ 580.8 Hearings.

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